S. Hrg. 98-1165

DISCRIMINATORY TAXATION ON PIPELINES

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2932

TO AMEND THE NATURAL GAS PIPELINE SAFETY ACT OF 1968 AND THE HAZARDOUS LIQUID PIPELINE SAFETY ACT OF 1979 TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEARS 1985 AND 1986, AND FOR OTHER PURPOSES

SEPTEMBER 28, 1984

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DISCRIMINATORY TAXATION OF PIPELINES

FRIDAY, SEPTEMBER 28, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:39 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Pamela Garvie, staff counsel, and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. The purpose of today's hearing is to consider S. 2932, a bill introduced by Senator Ford dealing with discriminatory State taxation of interstate natural gas pipelines. This hearing is intended to provide a more in-depth review of issues first raised during the pipeline safety hearing this committee held last April.

These issues include whether States are unreasonably discriminating against interstate pipelines by subjecting them to higher tax rates than other types of local commercial properties; whether the cost of such taxes is ultimately being passed on to consumers in the form of higher energy bills; what would be the financial impact on States if they were required to restructure their pipeline property tax system; whether a Federal remedy such as that provided for in Senator Ford's bill is appropriate.

Wendell, do you have any opening statement?

OPENING STATEMENT BY SENATOR FORD

Senator FORD. Yes, Mr. Chairman; I have a short statement.

First, I would like to thank you very much for scheduling this hearing on my legislation, S. 2932. I know that in the crush of the final days of the Congress it is often difficult to find time for hearings. Since there is so much misunderstanding about S. 2932, I appreciate the time to fully discuss this issue.

We all know that if State taxes impose an unreasonable burden on interstate pipelines the cost will be passed on to the consumer. The record will prove today, I think, that utilities, including gas pipeline owners, are paying property tax on assessment levels on commercial and industrial property which rates are higher than on property of comparable value.

My legislation will enable the gas pipeline companies to enjoin discriminatory assessments by suit filed in Federal district courts.

This committee has addressed this issue on other modes of transportation, so my approach in this legislation is not unique. The railroads, airlines, trucks, and buses have appealed to this committee that they were subjected to higher rates for property taxes than other commercial property, and we in this committee and this Congress have provided legislative relief.

So, Mr. Chairman, I look forward to the hearings and the witnesses on this issue, and I again thank the chairman for scheduling this hearing.

Senator DANFORTH. Thank you, Senator Ford.

[The bill follows:]

98TH CONGRESS
2D SESSION

S. 2932

To amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1985 and 1986, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 9 (legislative day, AUGUST 6), 1984

Mr. FORD introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1985 and 1986, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 17(a) of the Natural Gas Safety Act of 1968 (49 U.S.C. 1684(a)) is amended by—

(1) striking "and" at the end of paragraph (1);

(2) striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $3,472,000, for the fiscal year ending September 30, 1985; and

"(4) $3,698,000, for the fiscal year ending September 30, 1986.".

(b) Section 17(b) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684(b)) is amended by—

(1) striking "and" at the end of paragraph (1);

(2) striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $3,728,000, for the fiscal year ending September 30, 1985; and

"(4) $3,970,000, for the fiscal year ending September 30, 1986.".

SEC. 2. (a) Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2013(a)) is amended by—

(1) striking "and" at the end of paragraph (1);

(2) striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $900,000, for the fiscal year ending September 30, 1985; and

"(4) $958,500, for the fiscal year ending September 30, 1986.".

(b) Section 214(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2013(b)) is amended by—

(1) striking out "and" at the end of paragraph (1);

(2) striking out period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $500,000, for the fiscal year ending September 30, 1985; and

"(4) $585,000, for the fiscal year ending September 30, 1986.".

SEC. 3. (a) Section 16(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1683(a)) is amended by—

(1) striking "to the President for transmittal"; and

(2) striking "June 15" and inserting in lieu thereof "April 15".

(b) Section 213(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2012(a)) is amended by—

(1) striking "to the President for transmittal"; and

(2) striking "June 15" and inserting in lieu thereof "April 15".

SEC. 4. The Natural Gas Pipeline Safety Act of 1968, is amended by the following new section:

"TAX DISCRIMINATION AGAINST NATURAL GAS TRANSMISSION PROPERTY

"SEC. 20. (a) In this section—

"(1) 'assessment' means valuation for a property tax levied by a taxing district;

"(2) 'assessment jurisdiction' means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

"(3) 'natural gas transmission property' means utility operating property owned or used by a natural gas company for the production, gathering, transmission and distribution of natural gas in interstate commerce and subject to the jurisdiction of the Federal Energy Regulatory Commission;

"(4) 'commercial and industrial property' means all real and personal property, other than transportation, minerals, public utility property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy; and

"(5) 'public utility property' means property devoted to a public service and owned or used by a company which (a) performs a public service and (b) is regulated by any governmental agency.

"(b) The Congress finds and declares that the acts specified in paragraphs (1) through (4) of this subsection unreasonably burden and discriminate against interstate commerce. No State, subdivision of the State, or authority acting for a State or subdivision thereof may—

"(1) assess natural gas transmission property at a value that has a higher ratio to the true market value of the natural gas transmission property than the ratio that the assessed value of commercial and industrial property in the same assessment jurisdiction has to the true market value of such commercial and industrial property;

"(2) levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection;

"(3) levy or collect an ad valorem property tax on natural gas transmission property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction; and

"(4) impose another tax that discriminates against a natural gas company subject to the jurisdiction of the Commission.

"(c) Notwithstanding section 1341 of title 28, United States Code, and without regard to the amount in controversy or citizenship of the parties, the district courts of the

United States have jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of natural gas transmission property exceeds, by at least 5 per centum, the ratio of assessed value to true market value of commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining such assessed value and true market value shall be governed by State law. If the ratio of the assessed value of commercial and industrial property in the same assessment jurisdiction to the true market value of such commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sale assessment ratio study, the court shall find that—

"(1) an assessment of the natural gas transmission property at a value that has a higher ratio to the true market value of the natural gas transmission property than the ratio that the assessed value of all other property subject to a property tax levy in the same assessment jurisdiction has to the true market value of all such other property; and

"(2) the collection of an ad valorem property tax on the natural gas transmission property at a tax rate that exceeds the tax rate applicable to taxable property in the taxing district, are violations of this section. Any sales assessment ratio study conducted pursuant to this subsection shall be carried out under statistical principles applicable to such study.

"(d) The amendment made by subsection (a) of this section shall become effective January 1, 1986.".

Senator DANFORTH. The first witness is Mr. Kenneth Williams, Director, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission.

STATEMENT OF KENNETH A. WILLIAMS, DIRECTOR, OFFICE OF PIPELINE AND PRODUCER REGULATION, FEDERAL ENERGY REGULATORY COMMISSION

Mr. WILLIAMS. Thank you, Mr. Chairman, Senator Ford.

I am very happy to be here to have this opportunity to appear before you and discuss this subject. I have submitted a very brief statement which I would like to just briefly summarize and perhaps leave more time for questions.

I would like to point out first of all that it is my office which is the technical office that has the responsibility for evaluating both oil and natural gas pipeline rates and rate filings. So when filings are made with the Commission, it is my office that does the evaluation of them and ultimately provides the technical assistance with regard to any formal proceedings.

I would like to state, first of all, that since the Commission's oil pipeline regulation is currently under review in the courts I would like to confine my testimony to the natural gas pipelines.

In order to help understand the implication of changes in taxes, particularly ad valorem taxes, I would like to briefly talk about or describe the Commission's approach toward natural gas ratemaking. I would like to point out first of all that pipelines cannot change their rates without making filings with the Commission, and these filings, under section 4 of the Natural Gas Act, have to be made to the Commission and the public. The NGA requires noticing of any proposed changes.

In implementing the Natural Gas Act, the Commission has imposed very stringent filing requirements not only to detail the costs that are to be included in rates but the support for those costs. And so, once filings are made they are carefully evaluated by the staff to determine whether or not there are potential problems, and then the staff makes recommendations to the Commission as to whether certain issues should be pursued or not.

It is important to recognize also in this context that the Commission uses a test period approach which uses 12 months of actual experience and permits the companies to make adjustments for the next 9 months so that the costs that are reflected in rates are based upon actual costs as adjusted for estimated changes in cost.

These individual costs must be specifically identified and must be supported, and they are each evaluated very carefully, and where there are changes or where there are questions as to the level of costs, particularly such costs as ad valorem taxes, the companies are generally required to provide detailed support for both the level of the cost and the adjustments to those costs.

I would like to stress that the pipeline companies in order to recover increased costs must file for those in rate change filings. The Commission has not been willing to permit automatic tracking adjustments of changes in ad valorem taxes or other taxes simply because to do so would eliminate the incentive for, I think, the companies to resist the paying of increased costs.

So one of the principal methods whereby the Commission and its staff attempts to restrain and control the amount of costs, such as ad valorem taxes, is to impose upon the pipeline companies the burden to show that they are making an active effort to limit or minimize any changes in taxes.

Generally I can say that if a pipeline is able to support the level of cost that they have reflected in their rates, then those costs will be permitted to be flowed through. So I think you can say that if there are discriminatory taxes that are levied on the part of State and local authorities, there is a chance that those taxes will be flowed through.

Now let me stress that in the context of overall changes, in the context of overall costs included in a pipeline rate case, ad valorem taxes are a relatively small part of the overall costs involved. Consequently, when the Commission and staff is concerned with and concentrating upon the rate impact, it obviously is going to emphasize those costs that have the greatest rate impact.

When you recognize that pipeline companies have taxes imposed on them by literally hundreds of different taxing jurisdictions, it would simply be an uneconomic and inefficient use of our resources to evaluate what each and every taxing jurisdiction has done, and so what we do is rely upon the pipeline companies, in fact insist upon the pipeline companies, doing whatever has to be done in order to minimize changes in taxes.

In conclusion, I think it is safe to say that to the extent that discriminatory taxes are incurred either by the customers of the natural gas companies or the pipeline companies' stockholders such taxes impose an unfair burden upon those parties.

Thank you. I would be happy to answer any questions that you may have.

Senator DANFORTH. Senator Ford.

Senator FORD. Thank you, Mr. Chairman.

Mr. Williams, I am reading your brief prepared statement, and I will try to stay within your statement. You say: "Natural gas pipelines typically recover taxes other than income taxes through general rate change filings." Therefore, if the taxes are changed the rates are increased and that filing will be made with you or your agency. Is that correct?

Mr. **Williams**. Let me clarify that what this is intended to say is that the only way that a pipeline company is going to recover changes in taxes is through a rate change filing. Now pipelines, based upon other costs, may not make those filings, and to the extent they do not make them then the costs are not flowed through.

So the burden is upon the pipeline company, if it incurs increased costs, to first of all make a rate change filing to recover the cost.

Senator **Ford**. Explain to this country boy how a pipeline would be able to offset increases in taxes—I mean prevent increases in State and local taxes.

Mr. **Williams**. There are two fundamental ways that this could happen, and it is not necessarily to offset the increase in taxes.

Senator **Ford**. I am not talking about offset. I am talking about how to prevent them from happening.

Mr. **Williams**. The pipeline companies typically—I would say virtually all pipeline companies—have very effective tax organizations that have the specific responsibility for negotiating with the State and local jurisdictions that impose taxes.

We look to the pipelines and their people that deal with these local authorities on a continuing basis to do an effective job of restraining the increase in taxes and making certain that these taxing jurisdictions understand that when they impose upon the pipeline companies, to the extent that they are discriminatory taxes that they impose taxes upon the pipeline companies, there is a good chance that those taxes simply flow downstream to the customers and consumers served by the pipeline companies.

Senator **Ford**. So what you are saying is that the State and local entities will set the tax rates, unless the pipeline can prevent those through lobbying or whatever. Then the pipelines are saddled with additional taxes which flow downstream to the consumer.

Mr. **Williams**. If the pipeline makes the filing, the answer is yes.

Senator **Ford**. OK. All right. And if the pipelines are unable to recover these taxes when they make a filing—just say that your agency denies a rate increase—then their stockholders will ultimately be required to absorb the underrecovery—that is, the pipelines would not pay the normal dividend to the stockholders who have invested in the company. Is that what you mean?

Mr. **Williams**. That is what I mean. Let me make one caveat, and that is that this assumes that they are not able to offset those increases with any other cost reductions. But talking strictly in terms of the taxes, that is exactly right.

Senator **Ford**. Well, if you have a very efficient company that cannot reduce its costs and the local entity or State entity increases its taxes, the pipeline makes a filing to increase its rates to absorb that new tax, and you turn the request down, there is only one ultimate way for the new tax to be absorbed, and that is by the stockholder. Is that right?

Mr. **Williams**. I do not want to make this too technical.

Senator **Ford**. I do not think that is very technical. You have a very efficient company which has had its taxes raised, and when its taxes are raised and you refuse to allow it to increase its rates, ultimately it reduces its dividend. That is what you say here—that the stockholders ultimately would be required to absorb the underrecovery.

Mr. **Williams**. I think that what I am saying, and I made the statement all other things being equal, what that phrase is intended to say is that when you look ultimately at the pipeline's rates and the pipeline's rates consist of taxes and return and operating expenses and depreciation, a lot of things, there are during any period of time changes in the relationship between taxes incurred and depreciation and return and things like that. If we assume that the relationship between all these other costs and revenues remain relatively the same and you are talking only about taxes, ad valorem taxes, then to the extent that the pipeline incurs additional ad valorem taxes and either does not make a filing or makes a filing and the Commission says you have not taken all the necessary steps to minimize those taxes, and therefore the company is not able to recover them, then that burden is going to flow through to the stockholders.

Senator **Ford**. Well, if you make a determination that the company has done everything that it can do and followed all the steps, and you still turn a rate increase down, ultimately the stockholder loses his dividend or a portion thereof.

Mr. **Williams**. I would say only one thing. If we make the determination the company is doing all it can do to hold down taxes, it has not been the Commission's practice to refuse to let the companies flow them through.

Senator **Ford**. Well, you also state under either event that you set out in your statement that there will be an unreasonable burden imposed as a result.

Mr. **Williams**. I would agree that to the extent that discriminatory or excessive taxes are charged and the pipeline is required to incur those and either flow them through or absorb them, that is an unreasonable burden upon the consumers and possibly the stockholders of the pipeline company.

Senator **Ford**. Well, I am going to ask one more question. I do not want to monopolize your time and take away from my distinguished colleagues. Would discriminatory taxes on one pipeline as compared to another pipeline coming out of a different location put them in an almost noncompetitive position, or could the taxes eliminate the competition between the pipelines?

Say State X has taxed one pipeline and State Y has not quite done that. Then does that put Y pipeline in a better competitive position than X?

Mr. **Williams**. Under today's circumstances where the competition in the marketplace is quite intense and where the markets are frequently served by more than one pipeline company, I think it can generally be said that anything that increases cost on one individual pipeline puts it at a competitive disadvantage against another pipeline company.

Senator **Ford**. Thank you, Mr. Williams. Mr. Chairman, I will back off for a while.

Senator **Danforth**. Mr. Williams, can you estimate for us the extent to which pipelines are taxed in a discriminatory fashion and can you quantify the discriminatory ingredient, if any, in their taxes. Further, can you tell us or guess at the dollar effect on consumers of any discrimination under which the pipelines are being taxed?

Mr. **Williams**. Mr. Chairman, I would say that I cannot, and the reason for that is that, as I pointed out in my testimony earlier, insofar as ad valorem taxes we attempt to deal with them on a total basis and we do not look at each individual taxing jurisdiction.

But what we do is require the pipelines to come in and support the level of ad valorem taxes and if they indicate that the taxes are changing, then we insist upon justification for the changes. And they may say well, it is a change in the tax rate or it is a change in the tax assessment. Then the question that is posed is well, what are you doing about it. Are you attempting to challenge the increased taxes and, if so, by what means?

Senator **Danforth**. The issue before us, as I understand the issue, has to do with discrimination in State taxation against pipelines. Do you have any opinion as to whether there is such discrimination, what the quantification of it is, the effect of that discrimination on the pipelines, and the extent to which that is passed on to consumers—or do you not have any opinion?

Mr. **Williams**. If I felt that the amount of discrimination was substantial, then I think that we would have to be raising that as an issue in virtually all of the rate cases.

Senator **Danforth**. Have you decided it was substantial?

Mr. **Williams**. On individual companies and with regard to individual taxing jurisdictions, the amount may be significant. In the overall context of pipeline rates, it has not been substantial and so consequently our effort has been to concentrate upon the bigger items of cost and not necessarily these individual items.

Senator **Ford**. I apologize and thank the Chairman. But you are saying that you do not bother with higher taxes even though you admit in some locations that they are discriminatory and the taxes are higher. You are saying that overall it seems to be all right and therefore, you do not worry about a selective area that increases the taxes at an outlandish rate?

Mr. **Williams**. I hope I did not convey that thought because what I indicated was to the extent that it comes to our attention, the burden is then imposed upon the company to do whatever it can to either contest the increase in tax or try to renegotiate or something like that. But when you consider the limits on our staff versus the availability of the staffs of the individual companies, it is much more efficient for them to pursue this than it is for us to do so.

Senator **Danforth**. As I understand it, your view is that there are cases of discriminatory taxes which probably make some difference, but as a general principle, nationwide the extent of discrimination is not of sufficient magnitude to focus your attention on it; is that right?

Mr. **Williams**. It has not been of sufficient magnitude on the rates of the pipeline companies so we had to specifically go after particular taxing practices.

Senator **Danforth**. In your opinion are there cases where it is significant?

Mr. **Williams**. I am familiar with certain instances where States have imposed taxes which would impose important and significant impacts.

Senator **Danforth**. In other words, the discriminatory element of the taxes has been significant?

Mr. **Williams**. That is true. But insofar as ad valorem taxes I cannot cite you an example of where I am familiar with a particular taxing jurisdiction that has imposed a discriminatory tax which has had a significant impact.

Senator **Danforth**. You cannot cite a single example, is that right? You cannot cite them right now?

Mr. **Williams**. What I am saying is that there may be discriminatory taxes levied by certain jurisdictions, but insofar as specific examples and the quantification of them, there simply is not that degree of detail that is available to us and available to me.

Senator **Danforth**. I do not want to ask you for a degree of detail because that is not a reasonable question to ask. But I am asking you on the basis of your experience on the job whether you have an opinion as to whether or not this is a serious matter, whether or not it is a matter which has a dollar effect on consumers, and whether you could estimate what percentage of a consumer's natural gas bill would be made up of the discriminatory element in State taxation.

Mr. **Williams**. Any discriminatory act that is unduly discriminatory is obviously a concern, and the impact of that is something you have to be concerned with. But in the context of impact on ratepayers, we have looked at some of the recent filings by the pipeline companies and the total amount—this was six recent rate cases by pipeline companies—of ad valorem taxes paid by the companies in cents per mcf of gas sales was in the neighborhood of about 1½ cents.

So that is the rate impact upon the distribution companies that are purchasing the gas.

Senator **Danforth**. That is the total tax effect?

Mr. **Williams**. That is the total ad valorem tax effort.

Senator **Danforth**. But not all of the tax is discrimininiatory, right?

Mr. **Williams**. I would assume not.

Senator **Danforth**. Discrimination would be some portion of the total tax, and what I am asking you is do you have any, just on the basis of your own personal judgment, your own experience, general knowledge of the area, do you have any sense of what portion of the total tax bite of the States is discriminatory and the extent to which that is passed on to consumers?

Mr. **Williams**. I do not.

Senator **Danforth**. You do not?

Mr. **Williams**. I do not.

Senator **Danforth**. And again while you think that there may be some specific cases, you cannot name them now?

Mr. **Williams**. I cannot name them, and in terms of the impact they would obviously not have a significant impact upon the rates of these particular companies.

Senator DANFORTH. You mean in those six cases that you are talking about or just in general?

Mr. WILLIAMS. These six companies, and I am satisfied that this is generally representative.

Senator DANFORTH. That discrimination does not have a significant impact?

Mr. WILLIAMS. Discrimination has an impact other than just the rate impact, but in terms of what you pursue—in terms of what the Commission pursues in a rate case, we pursue what has an impact upon customers. In the overall context of rate cases and the myriad of costs that are included, as you can see, a cost that represents 1 cent or 2 as compared to other costs that represent 30, 40, and 50 cents, you are obviously going to concentrate most of your effort on those higher costs.

Senator DANFORTH. So in these six recent cases, in your judgment, if there is an element of discrimination in the rates, it is insignificant. Would that be fair to say?

Mr. WILLIAMS. It would be relatively insignificant.

Senator DANFORTH. OK. Senator Long.

Senator LONG. Are you familiar with the difference between classification and discrimination in the law of taxation?

Mr. WILLIAMS. I am not a tax lawyer, so I would not be. I am familiar only with the discrimination aspects of the Natural Gas Act.

Senator LONG. Right. But what we are talking about here has to do with taxation, is that not correct? That is what the hearing is about.

Mr. WILLIAMS. And I am addressing the flowthrough of that taxation, that is right.

Senator LONG. I do not know the extent to which you have looked into it, but if you have looked into it at all I would think that you would know that a taxing jurisdiction has a right to classify for taxing purposes.

Mr. WILLIAMS. Classify property for taxing purposes?

Senator LONG. Yes.

Mr. WILLIAMS. Yes, I agree with that.

Senator LONG. So you can tax one thing at one rate and another thing at another rate. You have a right to do that.

Now here is a statement that is made by a witness who appears on behalf of the Louisiana Assessors. He says: "It is my understanding that State taxes which impede interstate commerce are Federal questions which can be heard in Federal court." Is that correct or not, to the best of your understanding?

Mr. WILLIAMS. I am not an attorney and I would prefer not to answer that type question.

Senator LONG. That is fine. I will not push you. We will get an answer at some future point from someone who claims qualification to speak to it.

Now Senator Ford pressed you for a particular answer which he had some difficulty getting it. He wanted you to assume certain facts and give him a yes or no answer in effect based on those assumptions. He had great difficulty getting you to make those assumptions.

And basically does that not have to do with the fact that there are, to use the word you used in answer to a another question on a different subject, myriads—m-y-r-i-a-d-s, I think that is how you spell it, that means thousands, does it not? Would you mind defining myriad?

Mr. WILLIAMS. Well, it is at least hundreds.

Senator LONG. Well, I thought it was approaching thousands. I cannot see that it makes much difference, but could there be literally thousands of other matters that are involved in these rate cases?

Mr. WILLIAMS. Well, whether it is hundreds or thousands, there are a large number of items involved in rate cases and a lot of them involve large amounts of dollars, and you have to concentrate upon those that have the biggest dollar impact.

Senator LONG. Now assuming that a pipeline company is seeking a certain rate—I do not know what the rate would be, but that is your job to look at it and decide what rate the company is entitled to have. Also assume the company is able to get the tax cut in a number of State jurisdictions. Is it your impression based on your experience that if the company can, it is going to attempt to come to the next rate hearing and argue that even though its taxes were reduced, it had other items that offset them so that no rate cut is justified?

Mr. WILLIAMS. Well, typically under the Natural Gas Act companies when they file general rate change filings they file to reflect all of their costs and all of their changes in costs, and to the extent that they are incurring or are successful in reducing the impact of ad valorem taxes then presumably that would be reflected in their rate filing.

But at the same time they would be reflecting changes in other costs, some of which may go up and some of which may go down, all of which will result in the ultimate rate level.

Senator LONG. Well, now let us just assume that this year on this item, this very item here, a number of pipelines save some money on taxes. It is a saving that they were in no position to anticipate. Could you explain to me at what point does the Commission require them to pass that on through to the customer? When would that happen?

Let us assume that they save $1 million on their taxes in Pointe Coupee Parish. Then at what point could the consumer be assured that he was going to get the benefit of that tax cut?

Mr. WILLIAMS. The simple answer is at the time they file a rate filing to reflect that change.

Senator LONG. I just want to see how the Commission works, and how the pipeline works. When is that going to be? I mean, suppose it happens now that they get a break, a tax break, because they receive a tax cut of $1 million in Point Coupee Parish. Now when is the consumer going to get something out of that?

Mr. WILLIAMS. At the time the company makes its rate filing.

Senator LONG. You say at the time. That is what I am getting around to. At what time? When is that likely to be?

Mr. WILLIAMS. Well, just as I had had trouble answering Senator Ford, I have trouble answering this straightforwardly for the reason that a rate filing is one way to achieve lower rates. Another way is if you simply go into the marketplace and your cost of gas is so high that you start losing markets, then you have to do something, and some pipelines have even filed—because their rates are too high—they have filed adjustments in their rates and agreed to shift costs to the stockholders because they can no longer get the rates they are charging in the marketplace.

So rate filings are one way that you directly reflect the changes. The market sometimes requires you to reflect changes that you would not otherwise reflect, and under today's circumstances pipeline companies are having to do everything they can to hold their rates down and even get their rates down lower.

Senator **Long**. I understand that. But I guess the question I want answered, to get to the point, is that it is not entirely unlikely that it would be years before the consumer ever gets any benefit, if at all, out of that tax cut.

Mr. **Williams**. It may not be directly reflected in rates, that is right.

Senator **Long**. Well, thank you very much.

Senator **Ford**. What is the name of that parish that you were referring to there?

Senator **Long**. Pointe Coupee.

Senator **Ford**. Pointe Coupee. Have they ever reduced their rates?

Senator **Long**. Well, I asked a hypothetical question.

Senator **Ford**. I do not think that is hypothetical. I think that should be factual.

Senator **Long**. I could just as easily have said Bossier Parish. If you want it in Bossier, we will have the Bossier Parish testifying.

Senator **Ford**. Good. Well, we will get a chance to visit with him and between the two of us he may wish he was fishing in the bayou or something.

Senator **Ford**. Let me ask you, Mr. Williams, this final question. If a discriminatory tax, which is somewhat higher than similar property that is assessed, increases a thousand cubic feet by a penny, what is the cost then to the consumer ultimately? Can you give me some kind of dollars?

Mr. **Williams**. You are talking about just a direct translation of that 1 cent?

Senator **Ford**. I guess that is what I am talking about. I am neither a lawyer nor an accountant, so I am in real trouble.

Mr. **Williams**. Well, the problem is that once again it translates into costs in a number of different ways. It translates into costs in terms of direct impact, but it also translates into costs to the extent that that increase in taxes causes certain pipelines to lose sales. Then, what that does, it means that then capacity costs have to be recovered over less sales. It means now you are shifting capacity costs as well.

So, there is more than just a direct translation of costs. There is an indirect translation of costs through capacity costs, shifting of capacity costs.

Senator **Ford**. Well, there are two losers in that, then. One, the consumer, if a tax is absorbed in the rate, as an increase in cost. Second, a tax increase might result in a decrease in sales and damage a company severely. Is that basically what you are saying?

If a company continues to serve its customers at the increased rate, that will cost the consumers *x* number of dollars increase. That is one impact. Second, it might cause that company to lose contracts, and therefore indirectly, the employees and the company would be losers.

So you are saying to me that a tax increase would cause losses on both sides one way or the other?

Mr. **Williams**. Well, they generally would be cumulative because what would happen is if a pipeline loses sales, then it still has the capacity costs, and it is going to try to recover those from the remaining customers, which means that the remaining customers are going to pick up more costs.

Senator **Ford**. So it is cost whichever way it goes.

Thank you, Mr. Williams.

Senator **Danforth**. Mr. Williams, thank you very much.

[The statement follows:]

STATEMENT OF KENNETH A. WILLIAMS, DIRECTOR, OFFICE OF PIPELINE AND PRODUCER REGULATION, FEDERAL ENERGY REGULATORY COMMISSION

It is a pleasure to appear before the Surface Transportation Subcommittee and to offer whatever assistance I can to your deliberations on the proposed legislation S. 2932. My appearance is on behalf of Raymond J. O'Connor, Chairman of the Federal Energy Regulatory Commission. It is my Office that has the technical responsibility for evaluating the costs either incurred or expected to be incurred by interstate natural gas and oil pipelines for the purpose of determining their appropriate rate treatment. To the extent that the technical staff questions whether certain costs should be included in the rates of a pipeline company, it generally raises these matters as issues in formal proceedings. Formal proceedings may be instituted as the result of rate change filings by interstate pipelines or through investigations initiated by the Commission Technical staff participates in formal proceedings through discovery, the presentation of exhibits and testimony, cross examinatioin of witnesses and the submission of briefs. The record made in these formal proceedings ultimately provides the Commission with the information necessary to resolve issues on their merits.

The Commission's approach toward oil pipeline rate regulation is currently under review in the Federal courts. Therefore, I would like to confine my testimony to the rate regulation of natural gas pipelines. Moreover, I would like to first address the methodology employed by the Commission in determining the costs, including taxes other than income taxes, property includable in gas pipeline rates.

Under Section 4 of the Natural Gas Act, no natural gas pipeline company can change its rates without first filing a notice with the Commission and the public. In implementing this section of the Act, the Commission imposed detailed filing requirements to support the proposed rate levels. Each element of cost must be clearly identified and supported. For ratemaking purposes, the Commission employs a "test period" approach which requires the pipelines to file twelve months of actual experience with adjustments for the subsequent nine months. Each element of cost is evaluated against both the actual experience and the adjustments to that actual experience. Taxes such as ad valorem taxes are generally summarized by state in the filings, but more detailed information is obtained during the investigation and discovery phases.

For the most part, the initial evalution of taxes such as ad valorem taxes is to determine the resonableness of the projected level of such taxes. If it appears that the taxes attributable to certain state or local taxing authorities may be excessive, the pipeline is required to support the level of taxes paid or payable.

The pipeline may cite as support the tax rate or the method of assessing value employed by the taxing authority. However, the Commission will look first to the pipeline to ensure that the taxes paid or expected to be paid are reasonable and do not discriminate against the company and its customers. Most pipelines have tax departments which have the expertise to challenge the taxes levied by individual taxing authorities. It is unreasonable to expect that the Commission would have either the staff or the data necessary to challenge the taxes levied by the hundreds of taxing authorities that are involved with each pipeline system. That is not to say that the Commission is without recourse where state and local taxes are excessive or discriminatory; it could possibly challenge such taxes as discriminating against interstate customers and consumers. However, the Commission has found it more effective to impose upon the pipelines the obligation to ensure that the taxes paid are not excessive or discriminatory and to preclude the recovery of taxes that do not meet these critria.

Natural gas pipelines typically recover taxes other than in come taxes through general rate change filings. This means that absent such filings, the pipelines are unable to recover increases in these taxes, all other things being equal. The Commission has not been willing to permit the tracking of changes in state and local taxes primarily because to do so, would reduce the incentive for pipelines to resist the payment of excessive or discriminatory taxes.

To the extent that state or local taxes discriminate against interstate pipelines, there exists the possibility that customers served by these pipelines will incur costs that should more appropriately be borne by state and local taxpayers. If the pipelines are unable to recover these taxes, then their stockholders may ultimately be required to absorb the under-recovery. Under either event, there will be an unreasonable burden imposed as the result of discriminatory taxing practices.

That concludes my direct presentation. I will be happy to answer any questions.

Senator DANFORTH. Next we have a panel of Marlow Cook, Robert Bailey and Everett Gibson. Marlow, would you like to start?

STATEMENTS OF MARLOW W. COOK, COUNSEL, WASHINGTON, DC; ROBERT BAILEY, TAX MANAGER, TENNECO, HOUSTON, TX; AND EVERETT B. GIBSON, COUNSEL, MEMPHIS, TN

Mr. COOK. Thank you, Mr. Chairman, Senator Long, Senator Ford. My name is Marlow Cook, and I am appearing before this committee to once again address a matter of equity in the State taxation of gas pipeline property operating in interstate commerce.

A coalition of 21 gas pipeline companies has formed itself to bring to the attention of Congress a wrong that badly needs to be set right. At an earlier hearing before this committee on this very issue, testimony was given by Tom Fleming, George Bobbitt and myself, together with a statement from Robert McSwain, a former State property tax administrator.

Mr. Fleming and Mr. McSwain are both former presidents of the International Association of Assessing Officers, which organization you have requested to appear here today and will do so.

In summary of my testimony, which I have submitted for the record, Mr. Chairman, in the field of State property taxation, interstate gas pipelines are assessed at a higher proportion of value than other property in States which employ a systematic method of discrimination in property tax assessments.

Classification of property at different percentages of market value is used to assess pipelines at the highest end of the spectrum. Classification by legislation or by administrative practice was prohibited by Federal law in 1976 for railroad property, as a burden on interstate commerce. The Supreme Court upheld the constitutionality of this Federal law in 1981.

The railroad industry obtained relief from this discrimination through Federal legislation. The Railroad Revitalization and Regulatory Reform Act of 1976, the so-called 4-R Act, prohibited discrimination against transportation property by providing a remedy in Federal court for injunctive relief. Subsequent Federal legislation provided relief for the trucking industry, the airline industry, and the bus industry.

Gas pipelines need Federal legislation to eliminate this discrimination. Benefits of lower taxes will be passed on to the consumers in the determination of cost of service in ratemaking by the Federal Energy Regulatory Commission.

I may say one of the problems Mr. Williams apparently had was talking about the whole spectrum of cost of service, and the magnitude of differential of the tax is not great in the total number of elements of cost of service, but as a measure of that element, taxes, the cost of the magnitude is absolutely significant.

I would say to you right now, Mr. Chairman, that the differential in many parts of the country between gas and No. 6 fuel oil to large industrial users is roughly 2 cents, and we are talking in terms of tax at 1.5 cents or whether it increased an additional cent. If you did that, you would then see a great loss of industrial customers to the fuel oil market and you would then see a disproportionate cost that would have to be allocated to the consumer, the individual consumer, the householder.

The proposed effective date of January 1, 1986, as proposed in this bill, will provide time for adjustment of the revenue base to equalize the tax burden in the assessment jurisdictions. That is the basis of my testimony, and I thank you for your time.

[The statement follows:]

STATEMENT OF MARLOW W. COOK

My name is Marlow W. Cook and I am appearing before this Committee to once again address a matter of equity in the state taxation of gas pipeline property operating in interstate commerce. A coalition of 21 gas pipeline companies has formed itself to bring to the attention of Congress a wrong that badly needs to be set right. At an earlier hearing before this Committee on this very issue, testimony was given by Messrs. Tom Fleming, George Bobbitt and myself, together with a statement of Robert McSwain, a foremer state property tax administrator. Statements of these witnesses are submitted for the record in this hearing.[1] I will summarize the testimony of those gentlemen for the benefit of the Committee and submit additional information.

There exists in this country a pattern of discriminatory assessment practices in many states which result in property taxes higher than the proportion of taxes paid by other commercial and industrial property owners in many of the 48 states in which pipelines operate.

Discriminatory tax treatment can take several forms. One such form is based on legal classification of property by states which use a statutory classified property tax system that place gas pipelines in the highest classification. Some of these classification systems grew out of court suits over the practices of state assessors in treating utilities, including pipleine companies, unfairly. The state answer to this was to amend the law to provide for a discriminator classified property tax system.

A second form is de facto classification where disparity in assessment ratio is reflected in the level of assessment used by the state tax assessors. This goes on despite state constitutions which mandate full and fair assessments. Moreover, as soon as a court declares the discriminatory tax to be illegal, the state takes steps to legalize what it was doing illegally. Recently one state passed legislation which would classify utility property at 30 percent of fair market value while setting the percentage at 15 percent for all other property. The effect of this is to tax pipelines 100 percent greater than commerical and industrial property. Other states have enacted laws setting percentages of assessed value on gas pipeline property from 30 percent to 67 percent higher than other commerical and industrial property.

A third form of discriminatory tax treatment is through improper valuation and allocation methods. Despite state uniform valuation laws that require all properties to be valued at market value, in practice, what occurs is that natural gas pipelines are valued at market value, or more, every year—while other properties are valued as infrequently as every 5 to 10 years.

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[1] See printed hearing, Serial No. 98-77, p. 68.

A form of tacit discriminatory tax treatment is the ineffectiveness of state court remedies. Seemingly many of the problems mentioned above could be resolved in state courts.

However, appeals made to State Tax Boards or Commissions fall upon deaf ears. Subsequent appeals to a state court result in the court deferring to the findings of the state tax agency. The railroads ran this same "Catch-22" cycle until federal legislation prohibited discrimination in the state taxation of railroad property.

I can assure you that litigation to achieve fairness for pipelines in state courts would be extremely expensive, time-consuming, and fruitless in view of the experience of all utilities. Ultimately, discriminatory taxes add to the cost of service which is paid by the consumer. Administrative procedings on property tax assessments are so structured that it is almost impossible for a natural gas pipeline to gain relief. The original administrative appeal board in some states is closely associated with the assessing body. Appeal to the courts is from the administrative body, but grounds for appeal are so narrow and the opinions of the administrative board are written in such a way as to make it extremely difficult to gain equitable treatment.

In 1938 the United States Code was amended at 28 USC § 1341 to limit the use of Federal District Courts for suits for injunctive relief for property owners against state taxing agencies. This was done to protect the states ability to collect general revenues for the orderly operation of state and county business. However, where interstate commerce is affected by discriminatory, burdensome tax assessment, an exception should be made to permit an opportunity to prove discrimination in Federal District Court.

Under current federal law, there is no provision to prohibit discriminatory tax treatment of property belonging to interstate natural gas pipeline companies. With respect to property belonging to other companies operating in interstate commerce, several laws have been passed to prohibit discriminatory tax treatment very similar to that which interstate natural gas pipeline companies currently experience. The railroad industry sought and received relief in the Railroad Revitalization and Regulatory Reform Act of 1976, the so-called, "4-R Act" (Public Law No. 94-210). The Tax Equity and Fiscal Responsibility Act of 1982 (Public Law No. 97-248) protects airlines from discriminatory taxes. The trucking industry was granted relief in the Motor Carrier Act of 1980 (Public Law No. 96-296), and most recently, the Bus Regulatory Reform Act of 1982 (Public Law No. 97-261) amending the Interstate Commerce Act (49 U.S.C. 11503a), granted relief to bus companies by prohibiting discriminatory property tax treatment of all motor carriers.

Interstate natural gas pipeline companies are the object of higher levels of taxation as a result of discriminatory assessing practices throughout the country. Natural gas pipeline companies are easy prey for such discriminatory tax treatment because the majority of their properties are fixed and located below ground, and cannot be abandoned without federal approval. Therefore, it becomes relatively easy for a state assessor to apply a higher assessment ratio against pipeline property, since the industry cannot relocate to a better tax climate.

Moreover, gas pipleines operating in interstate commerce serve consumers in states far beyond its borders. Since the additional taxes are passed in as "cost of service" to the consumer, the taxing state has effectively "exported" its tax burden to citizens of other states. States which classify interstate gas pipeline property at a higher percentage of value than on other property are creating a discriminatory burden on interstate commerce.

There are also several misconceptions which must be clarified. Historically, the foundation of property taxation was based on the premise that a property owner would share in the cost of local services in proportion to the value of his property in relation to the value of the total property in that governmemtal unit. That foundation now has been shattered through selective grants of exemption and inequitable property classification systems.

Secondly, tax authorities perceive the gas pipeline industry as having "deep pockets" and therefore "fair game" for those who are trying to protect both their source of revenue and the other classes of taxpayers. This practice has been corrected for railroads, airlines, trucks and bus companies. The old rationale is still applied to natural gas pipeline companies, however, and the logic is as false today as it was for the other industries before they were granted relief.

A final misconception is that tax savings obtained through federal legislation would be a direct benefit to the industry's balance sheet. However, the fact is that since the natural gas pipeline industry is regulated by the Federal Energy Regulatory Commission, any reduction in property taxes obtained through this legislation would flow through directly to the consumers. The only industry benefit comes through the demonstration of continued good faith efforts to halt the rising price of the product.

CONCLUSION

Current law should be amended to prohibit discriminatory state tax treatment of property of interstate natural gas pipeline companies so as to remove an undue burden on interstate commerce. The United States Code presently contains an antiinjunction provision protecting state governments from suits which would interfere with the orderly assessment of taxes for the collection of general revenues. An exception should be adopted where interstate commerce is adversely affected. Prohibition of this discriminatory tax treatment would promote equity and fairness as between the state property tax treatment of interstate natural gas pipeline company property and the property of other commercial and industrial companies not subject to discriminatory tax treatment. In addition, the prohibition of discriminatory tax treatment of interstate natural gas pipeline companies would be consistent with the policy and Congressional intent underlying recent legislation prohibiting such discriminatory state tax treatment of airlines, buses, trucks and railroad companies.

Senator **Danforth**. Thank you.

Mr. Bailey.

Mr. **Bailey**. Mr. Chairman, I am Robert W. Bailey, speaking on behalf of a coalition of 21 federally-regulated interstate gas pipeline companies. I am the manager of taxes for Tenneco, Inc., Tennessee Gas Pipeline Co. Division, having worked in the property tax field for the past 18 years.

Included in the statement are schedules for the record showing the effect this proposed legislation would have in those States utilizing a discriminatory form of classification for ad valorem tax purposes. I think this is what you were getting at with Mr. Williams a while ago. This gives you the dollar impact.

Schedule 1 reflects an estimate of the adjustment to our industry's tax burden in those States which presently discriminate by statute against interstate natural gas pipeline companies compared to other commercial and industrial taxpayers.

In Alabama, for example, utilities are assessed at 30 percent of fair market value, all property not otherwise classified at 20 percent, and agricultural, forest, and residential property at 10 percent. Consequently, gas pipelines are assessed 50 percent greater than other commercial-industrial properties, and 200 percent greater than farm and residential properties.

Schedule 2 reflects an estimate of the adjustments which could be obtained through the appeal process in those States in which a de facto form of classification exists for property tax purposes. Generally, most State statutes require that all property be valued equally and uniformly on the basis of fair market value. However, this law is rarely enforced.

In practice, only State-assessed pipelines and other public utilities are revalued annually at fair market value. Locally assessed properties are revalued infrequently, which results in annual assessments on these properties which are only a fraction of the fair market value required by law.

I am personally aware of a Mississippi county in which the local real estate had not been revalued for more than 25 years prior to 1984. These are examples of the discrimination in the assessment of natural gas pipeline properties compared to the assessment of the properties of other taxpayers.

The vast majority of States centrally assess pipelines and other public utilities at the State level by an agency such as a State level by an agency such as a State tax commission or department of revenue. They have the responsibility of annually assessing all the property of public utilities within that State and then distributing this assessed value to the local taxing jurisdictions where the property is physically located.

Our pipeline properties are assessed by the same State administrator and in the same manner as that of the railroads. We are asking Congress to grant interstate natural gas pipelines the same right for fair and equitable assessments of our properties as has been previously granted by the Congress to the railroads, motor carriers, buses, and airlines.

Since passage of the Railroad 4-R Act many State administrators have asked us, "When are the pipelines going to obtain their 4-R type legislation? If the railroads deserve it, then certainly the pipelines do also." Passage of this legislation would not come as a surprise or shock to these officials.

Any benefits of lower taxes obtained through this legislation would flow through directly to the consumer in the form of lower rates for the price of natural gas.

In closing, I would like to state that it has been my experience that where large changes in a taxing jurisdiction's total tax base occurs either through reappraisals or some other circumstances, such as a change in classification, State law allows the taxing jurisdiction to adjust their mileage rate to produce approximately the same revenue produced prior to the change. Therefore, we do not estimate a loss in local net revenues due to this legislation.

Thank you, Mr. Chairman. I am open for any questions.

[The attachments referred to follow:]

SCHEDULE I

EFFECTS OF PROPOSED FEDERAL LEGISLATION IN STATES WITH LEGAL CLASSIFICATION

NATURAL GAS PIPELINE COMPANIES

STATE	1982 TAXES (1)	PIPELINE INDUSTRY CURRENT LEVEL OF ASSESSMENT	COMMERCIAL & INDUSTRIAL CURRENT LEVEL OF ASSESSMENT	1982 PIPELINE TAXES @ COMMERCIAL & INDUSTRIAL LEVEL	ESTIMATED CHANGE IN 1982 PIPELINE TAXES
ALABAMA	1,652,004	30%	20%	1,101,336	550,668
ARIZONA	10,098,243	38%	25%	6,643,581	3,454,662
ARKANSAS	6,674,729				
CALIFORNIA	9,536				
COLORADO	7,255,802				
CONNECTICUT	476,271				
FLORIDA	1,340,604				
GEORGIA	1,654,743				
IDAHO	791,752				
ILLINOIS	1,269,931				
INDIANA	2,485,842				
IOWA	7,014,944				
KANSAS	19,160,604				
KENTUCKY	2,773.152				
LOUISIANA	31,975,828	25%	15%	19,185,497	12,790,331
MARYLAND	1,042,020				
MASSACHUSETTS	639,443				
MICHIGAN	10,414,062				
MINNESOTA	8,561,652				
MISSISSIPPI	12,230,075	30%	15%	6,115,038	6,115,038
MISSOURI	2,513,585				
MONTANA	567,234	100%	32%	181,515	385,719
NEBRASKA	3,273,272				
NEW HAMPSHIRE	134,855				
NEW JERSEY	4,398,074				
NEW MEXICO	5,181,968				
NEW YORK	9,448,119				
NORTH CAROLINA	489,758				
NORTH DAKOTA	250				
OHIO (2)	17,503,739	100% (PP)	35% (PP)	8,401,795	9,101,944
OKLAHOMA	13,898,957				
OREGON	1,935,321				
PENNSYLVANIA	303,363				
RHODE ISLAND	168,798				
SOUTH CAROLINA	967,887				
SOUTH DAKOTA	166,090				
TENNESSEE	3,156,087	55%	40%	2,295,336	860,751
TEXAS	16,921,847				
UTAH	654,748				
VIRGINIA	857,333				
WASHINGTON	2,116,545				
WEST VIRGINIA	167,570				
WISCONSIN	2,568,290				
WYOMING	3,129,173				
WASHINGTON, D.C.	24,242				
TOTALS	220,068,342	-	-	43,924,097	33,259,113

NOTES: (1) EXTRACTED FROM FERC FORM NO. 2 - ANNUAL REPORT OF NATURAL GAS COMPANIES - YEAR OF REPORT 12-31-82

(2) OHIO - ESTIMATED PERSONAL PROPERTY IS 80% OF TOTAL

SCHEDULE II

SCHEDULE OF ESTIMATED EQUALIZATION IMPACT
(DE FACTO CLASSIFICATION)

NATURAL GAS PIPELINE COMPANIES

STATE	1982 TAXES (1)	PIPELINE INDUSTRY PERCENTAGE OF FAIR MARKET VALUE	LOCAL PROPERTY PERCENTAGE OF FAIR MARKET VALUE	1982 PIPELINE TAXES @ LOCAL PROPERTY PERCENTAGE	ESTIMATED CHANGE IN 1982 PIPELINE TAXES
ALABAMA	1,652.004				
ARIZONA	10,098,243				
ARKANSAS	6,674,729	100%	60%	4,004,837	2,669,892
CALIFORNIA	9,536				
COLORADO	7,255,802	100%	36.67%	2,660,703	4,595,099
CONNECTICUT	476,271				
FLORIDA	1,340,604				
GEORGIA	1,654,743				
IDAHO	791,752				
ILLINOIS	1,269,931				
INDIANA	2,485,842	100%	87.5%	2,175,112	310,730
IOWA	7,014,944	100%	89%	6,243,300	771,644
KANSAS	19,160,604	100%	50%	9,580,302	9,580,302
KENTUCKY	2,773,152				
LOUISIANA	31,975,828				
MARYLAND	1,042,020				
MASSACHUSETTS	639,443				
MICHIGAN	10,414,062				
MINNESOTA	8,561,652	100%	85%	7,277,404	1,284,248
MISSISSIPPI	12,230,075				
MISSOURI	2,513,585	100%	47%	1,181,385	1,332,200
MONTANA	567,234				
NEBRASKA	3,273,272	100%	90%	2,945,945	327,327
NEW HAMPSHIRE	134,855				
NEW JERSEY	4,398,074				
NEW MEXICO	5,181,968	100%	67.5%	3,497,828	1,684,140
NEW YORK	9,448,119				
NORTH CAROLINA	489,758				
NORTH DAKOTA	250				
OHIO (2)	17,503,739				
OKLAHOMA	13,898,957	100%	42.31%	5,880,649	8,018,308
OREGON	1,935.321				
PENNSYLVANIA	303,363				
RHODE ISLAND	168,798				
SOUTH CAROLINA	967,887				
SOUTH DAKOTA	166,090				
TENNESSEE	3,156,087				
TEXAS	18,921,847				
UTAH	654,748	100%	51%	333,921	320,827
VIRGINIA	857,333				
WASHINGTON	2,116,545				
WEST VIRGINIA	167,570				
WISCONSIN	- 2,568,290				
WYOMING	3,129,173				
WASHINGTON, D.C.	24.242				
TOTALS	220,068,342	-	-	45,781,386	30,894,717

NOTES: (1) EXTRACTED FROM FERC FORM NO. 2 - ANNUAL REPORT OF NATURAL GAS COMPANIES - YEAR OF REPORT 12-31-82
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SCHEDULE III.—NATURAL GAS PIPELINE COMPANIES INCLUDED IN STUDY OF 1982 TAXES

Algonquin
Arkla
Colorado Interstate
Columbia Gas Transmission
Columbia Gulf
East Tennessee Natural Gas
El Paso
Florida Gas
Great Lakes Pipeline
Kansas Nebraska
Michigan Wisconsin
Midwestern Gas Transmission
Mississippi River
National Fuel
New York Energy
Natural Gas
Northern Natural
Northwest
Northwest Central
Pacific Gas
Panhandle Eastern
Southern Natural
Tennesee Gas Pipeline
Texas Eastern
Transwestern
Texas Gas
Transco
Trunkline
United Gas

Senator DANFORTH. Thank you, Mr. Bailey.

Mr. Gibson.

Mr. GIBSON. Mr. Chairman, my name is Everett Gibson. I am engaged in the private practice of law in Memphis, TN. Most of my law practice for the last several years has been devoted to State tax discrimination litigation. For that reason I have been asked to give testimony to this subcommittee on why it is absolutely essential to give natural gas pipelines access to Federal courts if Congress is going to grant Federal protection against State tax discrimination.

I would like to depart a moment from my prepared remarks to address a question asked by Senator Long of Mr. Williams. In fact if a gas pipeline were to bring a claim in Federal court for violation of the commerce laws or even the 14th amendment of the United States Constitution, that claim could not be litigated in the U.S. District Court.

I agree that a Federal question would be presented, and ordinarily the Federal District Courts would have jurisdiction. But the fact is this Congress in section 1341 of title XXVIII of the United States Code has removed from Federal district courts any jurisdiction over State tax matters, including those involving the Federal Constitution.

Pipelines have to litigate all State tax questions in State court. Historically and at the present pipelines and other utilities simply have not been able to obtain any relief from State tax discrimination in those State courts. There are four reasons why this is so.

Reason No. 1. Most States require the pipeline to protest its taxes before a State administrative agency. These agencies usually impose a virtually impossible burden of proof standard, the arbitrary and capricious standard. In my prepared written testimony I have cited to you Iowa as an example.

In some States, the agency that decides the pipeline's case is composed of the very State officers whose assessments are under appeal in the first place, completely destroying objectivity. I cited Wyoming to you as an example in my prepared testimony.

Reason No. 2. While the pipeline can appeal the administrative agency's decision to State courts, appeals in State courts are usually hopeless. This is because most States have a very narrow scope of review. If there is any material evidence to support the assessment, relief will be denied.

In addition to that, in some States the courts have expressly ruled that it is permissible to discriminate against pipelines and tax them at a higher rate than other businesses even where the State constitution has a tax uniformity provision. I have cited to you in my paper a recent decision of the Supreme Court of the State of Oklahoma where the natural gas pipelines were losers because that State supreme court refused to give pipelines and other utilities equal treatment under Oklahoma law.

Reason No. 3. Occasionally a natural gas pipeline or utility can obtain an enlightened State court decision striking down tax discrimination, although usually prospective in nature. When this happens, States have adopted tax classification systems which perpetuate the same discrimination that the courts ruled invalid. I have cited to you Tennessee, my home State, and Arizona as examples.

Reason No. 4. Some States require the pipeline to obtain relief from tax discrimination on a county-by-county basis. I have cited North Carolina to you as an example. If a pipeline in North Carolina crosses, let us say, 15 counties in order to obtain relief, complete relief, that pipeline has to file 15 different law suits each year.

By contrast, the railroads in North Carolina in a single law suit involving all North Carolina railroads in one case obtained relief in every county in North Carolina in which they operated after this Congress passed section 306 of the 4-R Act.

Experience has proven and Congress has already found in the areas of taxation of other interstate carriers that for legal, practical, and political reasons interstate carriers do not receive relief from discriminatory State taxation under State law. Pipeline assessment practices in the absence of Federal law are identical in most States to railroad assessment practices with respect to both de jure and de facto discrimination.

Pipelines, like railroads, must therefore have access to Federal courts to obtain relief from State tax discrimination. Legislation by Congress to prohibit discrimination must contain an exception to 28 U.S.C. section 1341 in order to be effective. Recent proceedings that we have cited to you before State administrative and judicial tribunals prove this to be the case.

Thank you for the opportunity to testify, Mr. Chairman.

[The statement follows:]

STATEMENT OF EVERETT B. GIBSON

My name is Everett B. Gibson, a Partner in the Memphis, Tennessee law firm of Laughlin, Halle, Clark, Gibson and McBride. I have been involved in the litigation of cases involving discrimination in state taxation for 10 years.

This statement addresses proposed legislation which would prohibit discriminatory state taxation of natural gas pipeline companies, and would provide a federal forum to redress discriminatory state taxation. Other witnesses have and will present evidence and testimony concerning the extent of discrimination against natural gas pipelines in state propery taxation. The purpose of this statement is to emphasize the necessity of access to federal courts, which is made necessary by the inadequacy of state administrative and judicial remedies to provide relief to interstate pipeline carriers.

The Congress, and more specifically the Senate Committee on Commerce, Science and Transportation, has already extensively researched the adequacy of state remedies for interstate carriers, including pipelines, in connection with its consideration of Section 306 of the Railroad Revitalization and Regulatory Reform Act. This statement will address the findings of the investigation in considering legislation, more specifically the Doyle Report (National Transportation Policy, report of the Committee on Commerce, S. Rpt. No. 445, 87th Cong., 1st Sess., 1961), and Discriminatory State Taxation of Interstate Carriers, S. Rpt. No. 91-630, 91st Cong., 1st Sess., (1969), with particular emphasis on pipeline company litigation.

EXISTENCE OF DISCRIMINATION

The majority of states provide for the assessment of pipelines and other interstate carriers by a state agency rather than by county or municipal assessors. This practice results from the fact that the property of interstate carriers, and particularly pipelines, crosses several counties within the states. It is a well accepted practice that public utility property, such as pipelines should be appraised for assessment purposes as operating units rather than by local assessment of individual parcels of property within a county or municipality. Therefore, in the vast majority of states, a natural gas pipeline company is appraised for property tax purposes as an entire interstate operating unit with the application of an allocation formula to allocate a portion of the total unit value to the state, and suballocation of the unit value to counties and municipalities.

As a rule, this appraisal or determination of market value is performed by staff members of the state's department of revenue. The pipeline property is appraised annually by professional appraisers who undertake to value the pipeline property each year for property tax purposes at no less than its fair market value.

Other commercial and industrial property in the vast majority of jurisdictions is appraised for property tax purposes at the local level of county assessors. Local assessment practices often lack the sophistication of professionalism of state assessment practices, and, as a result, other commercial and industrial property is appraised for property tax purposes at a lower percentage of market value than is the case with natural gas pipeline property. In virtually every state other commercial and industrial real property is reappraised for property tax purposes no more frequently than each five to ten years, while natural gas pipeline company property is in those same states reappraised annually by the state. As a consequence, by operation of inflation alone, locally assessed business property is invariably appraised for tax purposes at a lower percentage of market value than natural gas pipeline company property. In either instance, whether de facto discrimination has been caused by poor local assessment practices, or whether de facto discrimination has been caused by operation of inflation, the natural gas pipeline companies necessarily bear a greater portion of the property tax burden, because pipeline appraised values are allocated to local governments and the same tax rate is applied by local governments to disproportionate values or assessments.

To determine whether properties are being assessed on a fair basis, there needs to be some comparative analysis of the properties of utilities and commercial and industrial owners. This had led to the development of a test known as a sales assessment ratio study which is in widespread use by property tax administrators. The extent of de facto discrimination on property taxation can be shown by such a sales assessment ratio study. The ratio study is a statistical measurement. The sales assessment ratio study determines the average level of assessment of locally assessed real property relative to its market value. The ratio of assessed value to market value of property is determined by examining the affidavit of value of deed stamps on a recorded deed and comparing that value to the tax assessors' appraised value for ad valorem tax purposes. The assessed value is the numerator; the selling price is the denominator. The resulting percentage is the ratio of assessed value to market value for the individual sale sample.

Individual samples are edited to exclude transfers which do not appear to be at a arm's length, such as transfers between family members, or related corporations. Those sample ratios surviving the editing or verification process are then used to calculate average levels of assessment of levels of appraisal for assessment purposes.

The Bureau of the Census conducts a sales assessment ratio study in each state every five years as a part of the Census of Governments. Invariably, the results of the Census Bureau ratio study show that locally assessed commerical and industrial real property is, on an average, assessed substantially below the level of assessment prescribed by state statute. As an example, in the State of Georgia, the 1982 Census of Governments, which was just recently published, shows that locally assessed commercial and industrial real property is assessed at 30 percent of market value, whereas the level of assessment mandated by statute in Georgia is 40. Thus, due to de facto discrimination, each natural gas pipeline company in Georgia pays a disproportionate share of the property tax when its state determined value is apportioned to the Georgia countries, because it is thereby required to pay property taxes on the basis of 40% of value, while other businesses in the same county pay property taxes on the basis of 30% value.

The situation with regard to locally assessed commercial and industrial personal property is no better. State tax administrators in most jurisidictions candidly admit that the business personal property tax is poorly administered in most counties, and that, as a consequence, large amounts of business personal property escape taxation altogether. Even those counties which do attempt to appraise business personal property annually at the statutory assessment level fall far short of the mark because of inadequate resources available to local assessors to administer a tax that is extremely difficut to administer. In addition, several states (California, Arizona and Florida) in recent years have eliminated approximately one-half of commercial and industrial personal property from the tax base by exempting business inventories from the property tax, a trend which obviously has the result of shifting a larger part of the tax burden to businesses with little or no inventory, such as natural gas pipelines in some states. This trend, resulting in inequality in taxation for pipelines, can be, and should be, effectively curtailed by directing courts to consider exempt business property in determining the effectiveness of commercial and industrial personal property assessment practices. Types of property traditionally exempt, such as property devoted to religious, educational and charitable uses, would, of course, not be affected, because of their non-business character.

There is another form of de facto discrimination in property taxation. In some jurisidictions the discrimination resulting from lower than market values for locally assessed commercial and industrial property is compounded by determining values for utility and pipeline property at values which are higher than market. Although overvaluation has not been as much of a problem for natural gas pipelines as undervaluation of other business property, the proposed legislation should and does permit the federal courts to consider the level of assessment of the natural gas pipeline as well as that of local business property, which is essential to prevent any effort by a state to circumvent federal prohibition of tax discrimination by the simple expedient of overvaluation.

2. LACK OF AN ADEQUATE REMEDY

The majority of states provide for administrative review of tax assessments before some type of administrative tribunal, such as the State Board of Equalization, the State Tax Appeal Board, the Tax Commission, or some similar body. These administrative review agencies are staffed by members who are appointed by the governor, with or without the concurrence of the legislature, or who serve by virtue of political office. Unfortunately, these agency members are usually closely connected with the revenue department staff members whose appraisals they are obligated to review. One striking example is the statutory scheme in Wyoming. The governor in Wyoming appoints three tax commissioners, who are the executive heads of the Wyoming Department of Revenue and Taxation. These same three commissioners also comprise the State of Board of Equalization. If the pipelines are dissatisfied with the assessment, they must file their appeal with that same State Board of Equalization which initially approves the assessments in the first place.

In addition to the fact that the make-up of these administrative tribunals relies on political considerations, their determinations of inequitable assessments against pipelines are foreclosed by principles of review that place pipelines at a disadvantage. For example, three pipelines recently appealed their assessments in the State of Iowa to the Iowa State Board of Tax Review. In denying the appeals of the pipelines, the Board noted that, in proceedings before the Board, there exists a strong presumption that the Department of Revenue has properly performed its valuation function, and that the appealing pipelines had a heavy burden of showing by clear and convincing evidence that the Department had acted arbitrarily, capriciousy, or illegally. It should be noted that the Iowa legislature had removed this heavy burden of proof for locally assessed taxpayers, but the Board concluded as a matter of law that centrally assessed taxpayers, such as pipelines, still carried a heavy burden of proof. In the Matter of Michigan-Wisconsin Pipe Line Co., Williams Pipe Line Co. and Natural Gas Pipeline Co. of America, No. 302 (Iowa State Board of Tax Review, filed August 17, 1983).

Interstate carriers such as pipelines fare little better before the state courts than they do before administrative tribunals. This is because, in almost all states, state judicial review of assessments is narrow in scope. Almost all states employ standards of judicial review which require the courts to "rubber-stamp" approval of the assessments in the absence of substantial and material evidence. As a practical matter, such review standards can rarely be met. As the Doyle report pointed out in regard to state appeals by interstate carriers, "The burden thus imposed on the complaining party to overturn decisions of assessors or action by state equalization agencies is obvious." *See* p. 458.

A recent example of this heavy burden imposed on the pipelines is a decision earlier this year in North Carolina. In an appeal of a pipeline's assessment to the North Carolina Court of Appeals, the Court emphasized that its scope of review was limited to the record before the administrative agency, with the concomitant presumption of correctness of the taxing authority's assessment. Appeal of Colonial Pipeline, 313 S.E.2d 819, 821, 825 (N.C.App. 1984).

Even more discouraging is the willingness of some state courts to uphold undisputed discrimination in taxation in spite of tax uniformity provisions of state law. The Oklahoma Supreme Court in *State ex rel. Poulos* v. *State Board of Equalization,* 646 P.2d 1269 (Okla. 1982), held that the State Board of Equalization must equalize tax assessments of locally assessed taxpayers for the 1982 tax year among the counties of Oklahoma because of the Oklahoma constitutional requirement of "uniformity and equality of taxation on a statewide basis." (p. 1293). Two telephone companies in Oklahoma later appealed to the Oklahoma Supreme Court for relief from tax discrimination for the same tax year. Natural gas pipelines operating in Oklahoma also appeared in the case as intervening plaintiffs. *McLoud Telephone Company* v. *State Board of Equalization,* 655 P.2d 1037 (Okla. 1982). In the case of the telephone companies, the Oklahoma Supreme Court adopted a completely different view and held that: "[p]roperty of public service corporations is constituted and recognized at least implicitly, if not also explicitly, as a distinct class for taxation purposes." (p. 1037). Relief was denied.

3. RESORT TO CLASSIFICATION SCHEMES TO PERPETUATE DISCRIMINATION

There is yet another factor which is a cause of the inadequacy of relief from discrimination by pipelines on the state level. As has been pointed out, state administrative bodies and judicial bodies are bound by their state law and constitution. Even in those instances where pipelines and other utilities receive equalization relief from discriminatory taxation, an easy legislative response is to adopt classification schemes to perpetuate the discrimination. The States of Tennessee and Arizona, in the field of railroad taxation, provide examples of this phenomenon. In *Southern Pacific Company* v. *Cochise County,* 92 Ariz. 395, 377 P.2d 770 (1963), the Arizona Supreme Court held that the state's de facto property classification system whereby railroad property was assessed at 89% of full cash value rather than the 20% figure applied to all other property violated the Arizona constitutional requirement for uniformity of taxes. However, the court held that its ruling would be prospective in nature, thus allowing the state to adopt a new de jure property classification system, which it in fact did. Four categories of property were created according to use, and utilities were placed in the category receiving the highest rate of assessment. Despite the fact of the heavier burden carried by the utilities under this system, it passed constitutional muster in *Apache County* v. *Atchison, Topeka & Santa Fe Railroad Company,* 106 Ariz. 356, 476 P.2d 657 (1970), appeal dismissed, 401 U.S. 1005, 91 S.Ct. 1257, 28 L.Ed. 2d 542 (1971).

Similarly, in the State of Tennessee, a Tennessee appellate court was critical of the higher de facto level of assessment of railroad property as compared to other commercial and industrial property. However, the relief granted by the court of appeals was purely prospective. See *Southern Railway* v. *Clement,* 57 Tenn. App. 54, 415 S.W.2d 146 (1966). The state legislature responded by proposing and securing the passage of an amendment to the state constitution, which provided a de jure level of classification, thus allowing a higher assessment level for public utility property; 55% for public utilities, 40% for commercial and industrial realty, and 30% for commercial and industrial personalty. This classification system then withstood scrutiny in the state courts (See *Snow* v. *City of Memphis,* 527 S.W.2d 55 (1975)), although it was later successfully challenged by railroads in federal court under Section 306.

Efforts by pipelines to attack state property tax classification schemes have failed. In Alabama, utility property, including pipeline property, is classified as class one property, and is by law assessed at a higher percentage of its fair market value than other commercial and industrial property (class two property). Colonial Pipeline Company brought an action in Alabama courts challenging the validity of the property tax classification scheme. The trial court held that the taxation of utility property at a higher assessment level violated both federal and state constitutions. The Alabama Court of Appeals, however, ruled that classification of property for tax purposes is within the broad powers of the legislature, and is presumed valid under the Alabama state constitution. Furthermore, the classification passed federal constitutional muster because there was at least a "rational basis" for the discriminatory effect of the tax. The Alabama court of Appeals did note that federal law now prohibits such discrimination against railroads, airlines and trucking companies, but that in absence of federal legislation, such discrimination was permissible against pipelines. The Court said: "Were it not for the supremacy of federal statutes over state law, airlines, trucklines and railroads . . . would be subject to the same Class I classification as is assigned Colonial's property. The preemption for tax purposes of those other entities does not destroy the classification by state law from which they were exempted and to which Colonial continues to belong."

State of Alabama v. *Colonial Pipeline Co.*, Civ. 3824 (Alabama Court of Civil Appeals, filed January 25, 1984) p. 10.

4. REQUIREMENT OF A MULTIPLICITY OF SUITS

The pipelines, as do other interstate carriers, face another administrative problem when seeking tax relief. Pipelines may cross through several counties in a state, but state law sometimes requires a pipeline to file for relief in each of the counties in which it operates. As the Senate Subcommittee found in relation to railroad taxation, this means that a suit must be brought in every county of the state in which the pipeline operates, "a time-consuming procedure quite the opposite of a plain, speedy, and efficient remedy." See S. Rpt. No. 91-630, p. 7. Even in some states, such as North Carolina, where pipelines are "centrally assessed," state law only provides for equalization relief on a county-by-county basis, thereby necessitating a multiplicity of suits each year in which equalization is sought. It is expressly provided by statute in North Carolina that a pipeline or other public service company seeking relief from de facto discrimination must petition the county board of commissioners in each county which relief is sought. General Statutes of North Carolina, § 150-342(c).

By contrast, after adoption by Congress of Section 306, North Carolina railroads were able to obtain relief from de facto discrimination in all counties in North Carolina in which they operated in a single action brought in federal court. *Clinchfield R.R. Co.* v. *Lynch*, 527 F.Supp. 784 (E.D.N.C. 1981), aff'd. 700 F.2d. 126 (4th Cir. 1983).

The approach Congress has taken in relation to discriminatory taxation of railroads, as embodied in Section 306, alleviates the very real problem of a multiplicity of lawsuits. Similar federal procedure is desirable for the pipelines as well. Under the proposed legislation, as under Section 306, a pipeline would bring one lawsuit against the state assessing authority, usually the state department of revenue, rather than in each individual county in which the pipeline owns property.

5. CONCLUSION

The availability of a federal remedy tends to deter rather than to encourage litigation of tax matters which may interrupt the orderly process of the assessment and collection of taxes. As has been repeatedly proven by railroad tax litigation under Section 306, a firm commitment by Congress to eliminate discriminatory state taxation of interstate carriers, coupled with the grant of authority to the federal judiciary to effectuate the act's prohibitions, discourages the states from adopting illusory practices and statutory schemes which have in the past and continue today to belie the asserted commitment of the states to provide tax equity for all taxpayers.

The following observation from S. Rept. No. 91-630 is as pertinent today as it was when written: Unfortunately interstate carriers, especially railroads, are easy prey for state and local tax assessors. Railroads, oil pipelines, and other interstate carriers are non-voting, often non-resident, targets for local taxation, and cannot easily remove their right-of-way and terminals.

S. Rpt. No. 91-630, P. 3.

Experience has proven, and Congress has already found in the areas of taxation of other interstate carriers, that for legal, practical, and political reasons, interstate carriers do not receive relief from discriminatory state taxation under state law. Pipeline assessment practices, in the absence of federal law, are identical in most states to railroad assessment practices with respect to both de facto and de jure discrimination. Pipelines, like railroads, must therefore have access to federal courts to obtain relief from state tax discrimination, and legislation by Congress to prohibit tax discrimination must contain an exception to 28 U.S.C. § 1341 in order to be effective. Recent proceedings before state administrative and judicial tribunals prove this to be the case.

September 28, 1984.

Senator **Danforth**. Thank you, sir.

Senator Ford.

Senator **Ford**. Mr. Gibson, did I understand you to say—and if I am stretching a little bit, you can straighten me out, I am sure—that where the courts ruled that there was a discriminatory tax, the States placed property in statutory classification to offset what the courts had just ruled in favor of the pipeline, and so basically the decision of the court is superceded through classification?

Mr. **Gibson**. That is precisely what happened in the States of Tennessee and Arizona, Senator. I will add, though, in those two cases I have cited which are in my prepared testimony involved railroads, but the same principles apply in both of those States to natural gas pipelines.

Senator **Ford**. So we have heard the word "classification," about the difference in classification, and that the States have a right to classify?

Mr. **Gibson**. That is correct. I heard that question from Senator Long and I would like to respond to that. In my opinion, classification even where permitted under the 14th amendment is still discrimination. It just happens to be discrimination that is presumed to be or found to be within reasonable bounds by the courts.

But the fact is once you classify you are discriminating and it amounts to millions and millions of dollars for these pipelines each year and it needs to be stopped.

Senator **Ford**. Basically, then, the pipelines are the only interstate operation that has been refused the opportunity to go to Federal court?

Mr. **Gibson**. Well, the only interstate carriers. There are other utilities who also are victims of discrimination. Well, I guess the telephone companies call themselves communication carriers, but telephone companies and power plants also are victims of discrimination in most States, and they also are denied access to Federal court.

Senator **Ford**. Mr. Bailey, on schedule 1, labeled "Effects of Proposed Federal Legislation in States with Legal Classification," it appears that the pipeline industry current level of assessment runs from 25 percent to 100 percent, which is in the first column beyond the column for 1982 taxes.

What are the blanks? Under the column "Pipeline Industry Current Level of Assessment," after Alabama and Arizona, Arkansas, California, Colorado, Connecticut have no corresponding percentage. Is there any reason for that? Are your pipelines not there?

Mr. **Bailey**. No, Senator Ford, the reason for that is just to show what our total ad valorem tax expense was for the year. If you go down to the bottom you have got $220 million.

Senator **Ford**. The second column is the one I am talking about. The numbers range from 25 percent to 100 percent. What do you mean by that?

Mr. **Bailey**. I am sorry?

Senator **Ford**. Well, you have the pipeline industry current level of assessment.

Mr. **Bailey**. Right.

Senator **Ford**. You have some pipelines assessed at 30 percent. The first state listed is 30 percent, and the next one is 38 percent, but then you have a block that is blank, down to 25 percent for Louisiana. Why the block of blanks?

Mr. **Bailey**. Because these are States that do not have statutory classification.

Senator **Ford**. All right. And then looking at the next column entitled "Commercial-Industrial Current Level of Assessment." Now let us take Alabama, where it is 30 percent for pipelines and 20 percent for commercial and industrial. What does Alabama do to substantiate the difference in between the 30 and 20 percent?

Mr. **Bailey**. It is pure classification by statute.

Senator **Ford**. Just classification?

Mr. **Bailey**. Right.

Senator **Ford**. And then in Louisiana it is 25 percent for pipelines and 15 percent for commercial, and the reason Louisiana does not apply 15 percent to pipelines is because pipelines are classified at the higher level?

Mr. **Bailey**. That is true.

Senator **Ford**. All right. So in Montana it is 32 percent for commercial and 100 percent for pipelines. Proceeding to the column for 1982 pipeline taxes at the commercial and industrial levels—explain the $43 million a little more to me.

Mr. **Bailey**. OK, Senator. In the States that do have statutory classification that we list here, this is the amount of taxes that the pipelines would have paid if they had been equalized with commercial and industrial taxpayers, and then the last column shows the difference.

Senator **Ford**. Oh, I see. All right. So in Alabama, then, the 1982 tax was $1,652,004?

Mr. **Bailey**. Right.

Senator **Ford**. If the pipelines had been taxed at the commercial-industrial level of others otherwise classified, they would have paid $1,101,336, at a savings to the pipelines of $550,668?

Mr. **Bailey**. Yes, sir.

Senator **Ford**. Does that mean all pipelines operating in Alabama or just yours?

Mr. **Bailey**. No; that is all pipelines.

Senator **Ford**. So the pipeline industry actually paid $220 million in 1982 in taxes?

Mr. **Bailey**. That is correct, sir.

Senator **Ford**. If they had been taxed as other commercial-industrial property, overall taxes to the industry would have been reduced by almost $44 million?

Mr. **Bailey**. No, sir, we would reduce the overall by the last column, the $33 million.

Senator **Ford**. OK. You would have paid in those various States, then, $43 million and you would have saved the overall industry $33 million, which would bring taxes down to roughly $180 million that would have been paid to various States in ad valorem taxes?

Mr. **Bailey**. That is right.

Senator **Ford**. So the difference in the rate to the consumer would be a savings of approximately $33 million?

Mr. **Bailey**. Yes, sir.

Senator **Ford**. How does that relate in cents per mcf?

Mr. **Bailey**. I am sorry. I do not have that answer. I could obtain that for you at a later date if you would care to have it.

Senator **Ford**. If you could do that, because you are going to hear why this is just a penny or half a cent, but when you begin to look at a penny or a half a cent per mcf and how many are sold out there, it begins to add up.

Mr. **Bailey**. It is still very significant.

Senator **Ford**. Mr. Cook, in the relief that we are asking for under this legislation as it compares to relief for the trucking industry, the airlines, and intercity buses, is there any difference in the request in this piece of legislation from what Congress has already given those other three industries?

Mr. **Cook**. None whatsoever, to my knowledge, Senator **Ford**. I think probably in some of those statutes as a result of hearings and markups there may be minor changes, but I would be perfectly willing to make you an analysis across the board of the respective statutes and compare them with this one and file it in the record so that you could see.

Senator **Ford**. If you do that, I would appreciate it.

Mr. Chairman, I have no further questions.

[The following information was subsequently received for the record:]

Bishop, Liberman, Cook, Purcell & Reynolds,
Washington, DC, October, 25, 1984.

Hon. John C. Danforth,
U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Mr. Chairman: During the hearings conducted on September 28 on S. 2932, your committee requested that I submit for the record answers to two questions.

In answer to the first question concerning a comparison of the legislation with prior legislation affecting railroads, trucking companies, airlines and buses, I am attaching a comparison which shows the similarities and differences between the proposed provisions of S. 2932 and the four prior legislative enactments.

You also have asked for information on the savings to the consumer based on a projected reduction in tax paid by the pipelines should the proposed rate adjustment be made. While the question related to a potential $33 million saving, in fact schedules submitted with the testimony of the witness amounted to $64 million.[1] As we strived for an accurate answer to this question, we were faced with the same conclusion suggested by the witness from the Federal Regulatory Commission, Mr. Kenneth Williams, that no single variable in fuel pricing can be isolated for analysis in calculating the consumer cost impact. As you are aware, all aspects of fuel usage and pricing are interrelated, and thus the hypothetical adjustment of one factor necessarily affects other factors and requires appropriate parallel adjustment for accurate analysis and comment.

For example should the total volume of gas transported through a pipeline be reduced because the price was not competitive with alternative fuels, the total fixed cost of the pipeline would be borne by the smaller volume and the consumer would pay the increase. Should the opposite be true and the gas become more competitive price-wise with alternative fuels then the volume of gas would increase and the share of the fixed costs borne by each MCF would decrease with a resulting decrease in price to the consumer.

In attempting to submit an answer to the question raised, we have obtained data reflecting the approximate amount of natural gas sold in each of the eighteen states where discrimination is perceived to exist. We have divided the potential for savings on the basis of 1982 property tax payments into the MCF of natural gas delivered in those states. The result is the approximate monetary savings anticipated through this legislation. In the aggregate, approximately 12.150 billion MCF was delivered to the eighteen states in which tax relief is sought. The result is a reduction of approximately $.0051 (½ cent) per MCF on this natural gas for 1982.

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[1] $64 million is the total potential tax reduction set forth in the sum of Schedule I ($33,250,000) plus Schedule II ($30,900,000) submitted with the prepared statement of Robert W. Bailey, Tax Manager for Tenneco, Inc.

We trust this material is responsive to your request and should you require additional data please let us know. We appreciate very much your scheduling these hearings on such short notice and are confident that a remedy to the industry problem will be forthcoming in the next Congress.

Sincerely,

MARLOW W. COOK.

RESPONSE TO QUESTION OF SENATOR FORD ON THE SIMILARITY OF S. 2932 TO PRIOR LEGISLATION FOR PROHIBITION OF PROPERTY TAX DISCRIMINATION

Section 20 of S. 2932 as introduced by Senator Ford amends the Natural Gas Pipeline Safety Act of 1968 to define and prohibit tax discrimination against interstate natural gas transmission property. The bill assures access to Federal district courts to seek relief to prevent discriminatory treatment. The opening of this avenue of relief affords interstate natural gas pipelines a channel to challenge discriminatory assessment of state and local property tax assessors. The standards to be employed in this event, are whether the ratio of assessed value to true market value of natural gas transmission property exceeds, by at least 5 percent, the ratio of assessed value to true market value of commercial and industrial property in the same assessment jurisdiction. The burden of proof for this determination is governed by State law, and reference will be made to sale assessment ratio studies for such comparative value findings.

The Railroad Revitalization and Regulatory Reform Act of 1976 contains similar provisions to S. 2932 in all principal aspects. Discriminatory tax treatment of rail transportation property includes tax assessments on rail property which bear a higher ratio to true market value than the ratio assessed on all other commerical and industrial property. Discriminatory ad alorem taxes are prohibited along with any other tax resulting in discriminatory treatment of a common carrier by railroad. For relief from unfair tax treatment, jurisidiction is vested in Federal district courts. State law determines the burden of procf in such controversies and reference is made to sale assessment ratio studies for findings. See "Attachment A" (49 U.S.C. § 11503). This prior legislation did not attempt to exclude public utility property as a comparison class of property and this clearly is an intended exclusion of S. 2932.

Section 11503a of the Motor Carrier Act of 1980 addressed tax discrimination against motor carrier transportation property by defining and prohibiting discriminatory tax treatment in a manner comparable to the railroad legislation granting relief. The Act prohibits tax assessments on motor carrier transportation property which are more than 5 percent above tax assessments of other commercial and industrial property. Ad valorem taxes on property which violate the standard previously mentioned are similarly proscribed. Federal district court jurisdiction is granted for controversies and State law governs the burden of proof to be applied. Sale assessment ratio studies are used by the court to determine violations. The Act applies to motor carrier transportation property owned or used in interstate commerce. See "Attachment B" (49 U.S.C. § 11503a). The Motor Carrier Act of 1980 follows the language of the railroad legislation in most important respects but fails to prohibit further discrimination by the imposition of any other tax which results in discrimination against a motor carrier.

The Regulatory Reform Act of 1982 amended Section 11503a of title 49, United States Code as referenced above for trucks, to include buses. The effect of the amendments was to include protection of the busing industry against discriminatory tax treatment in the language of the existing law which protects motor carrier transportation property in the trucking industry. Consequently, buses qualified for the same relief which had previously been afforded to the motor carrier industry by means of slight modification of existing law to result in tax treatment which reflects that of motor carrier transportation property. See "Attachment B" (49 U.S.C. § 11503a).

Finally, the airlines were granted relief against discriminatory tax treatment in the Tax Equity and Fiscal Responsibility Act of 1982 which in part, amended Section 1113(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1513(b)). The prohibitions against discriminatory tax treatment included assessments at greater than fair market value for air carrier transportation property than the assessed value of other commercial and industrial property, and discriminatory ad valorem taxes. Moreover, the amendment included a prohibition against any tax on an assessment which bore a higher ratio to the true market value of the air carrier transportation property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisidiction has to the true market value of the other commercial and industrial property. See "Attachment C" (49 U.S.C. § 1513). The important provisions of the air carrier legislation did not provide for federal court jurisdiction. The legislation compares airline property to commercial and industrial property "of the same type." This language is unique to air carrier legislation.

Senator LONG. You say, Mr. Gibson, that classification needs to be stopped. It is my impression that under the law we have a right to tax whomever we please and we have a great deal of latitude in that regard. I do not like the windfall profits tax; I would like to repeal it. But it only is levied against the oil producers. It is not levied against the people who produce coal or some other commodity. You just have it against the oil producers.

That happens all the time. Legislative matters are matters that a legislative branch has a right to act on, and you have a right to make your case before them, but they have a right to act, too.

Mr. GIBSON. Well, Senator, I quite agree and I do not argue that my home State does not have the right to classify natural gas pipelines. It does. The Supreme Court of the United States has expressly held that it does.

My argument simply is I find it offensive that some groups of States, such as Tennessee, classify a natural gas pipeline so it carries a disproportionate burden of property tax in that particular State which consumers in other States have to share. To me, that is something that I find offensive, even though it is legal under the Constitution.

Senator LONG. Well, let me ask you this. Do those people in Tennessee use a lot of natural gas that is carried through interstate pipelines? I should think that almost all of it is carried through interstate pipelines.

Mr. GIBSON. It is. We have no natural gas production that I am aware of in my State.

Senator LONG. Well, then any taxes that people in Tennessee are putting on those pipelines are borne by their own people, the same as they are borne by those who consume the gas on the other end, are they not?

Mr. GIBSON. But Mr. Bailey's company, the Tenneco subsidiary, has to pass that extra burden that Tennessee imposes on his company that it does not impose upon IBM or Sears, Roebuck or General Motors, he has to pass that on to consumers in other States that do not classify pipelines.

Senator LONG. But do the people in Tennessee not pay the same tax that the others pay on the far end?

Mr. BAILEY. You mean pay the same rate for the gas?

Senator LONG. I mean pay the same tax. If Tennessee puts a tax on natural gas carried through interstate pipelines, do not the taxpayers in Tennessee pay that tax on all the gas they consume? It is all coming out of interstate pipelines, is it not?

Mr. GIBSON. But that burden is shared with the consumers in every other State that his pipeline serves.

Senator LONG. Well, I understand that. But Tennessee is not imposing a tax that its people are not paying themselves.

Mr. COOK. Senator, if I may say, I do not disagree with what you are saying, but the State that has the same rate and it is uniform can also manipulate all of its other taxes within the State for its own people within that State to reflect that they may have to pay a higher rate on gas.

For instance, if you have, let's say, a big exemption on real estate taxes in your State that does not apply in Senator Ford's State, he is picking up, that consumer is picking up the tax burden to the State of Louisiana but the individual in Louisiana is getting a break on his property taxes that a resident in the State of Kentucky is not getting.

So you have to look at the whole theory, and the theory is that classification is legal but the problem is that the tax assessors in the respective States have taken classification that benefits the State by passing the tax on to people out of the State and then give the benefit to the people in the State in another taxing factor.

And that is the problem, and it exists and you and I know that it exists.

Senator LONG. Well, you are arguing that we have no right to tax a farmer, a working man, or a homeowner on his property on a basis more favorable than we do the pipeline company, and I am not prepared to buy that.

Mr. COOK. No, no, no; Senator. I am saying that as a result of the taxes you get on the interstate pipelines in the State of Louisiana you can give the farmer in Louisiana a tremendous benefit by giving him a great exemption on a farm that the farmer in Senator Ford's State cannot get, and he is still paying the high rate for the gas.

No, I am not making the comparison between the pipelines and the farmer. Let us make the comparison between the farmer in one State and the farmer in another. Let us say, for instance, that you can get so much off the pipelines. Let us say that if *Maryland* v. *Louisiana* had been ruled the other way and that the revenue were so great in the State of Louisiana that you could exempt everybody in Louisiana from paying property taxes.

He cannot exempt everybody in the Commonwealth of Kentucky from paying property taxes, nor in the State of Missouri, but they are paying the additional taxes as a result of the first use tax imposed in Louisiana. So what I am saying is that we are looking at a philosophy and the philosophy at the political taxing level in the respective States is to find a tax that you can pass on, that can be paid by the end users for the benefit of the State and even if the person, end user in your State pays the same thing you can give him benefits in other taxes because they are at the State level and you can control them at a State level.

And I think that is the theory.

Mr. GIBSON. May I make one additional comment? Back to Tennessee as an example, there are a number of natural gas pipelines crossing through Tennessee that do not sell gas in my State. So the consumers in Tennessee are not paying the higher rate. The higher rate entirely caused by discriminatory taxation in Tennessee is passed on to customers in other States, every bit of it.

Senator LONG. Well, I do not see anything in your argument that does not conflict directly with the right of a State government to decide how it is going to collect its taxes on its own people or the property within the State, and it seems to me that States are entitled and have a great deal of discretion as to whom they want to tax and whom they do not want to tax and how much they want to tax each operating unit.

Mr. COOK. Senator, I do not disagree with that. I am only saying to you that suppose that we decided in the Commonwealth of Kentucky that we were totally and completely dry, Senator, in the Commonwealth of Kentucky——

Senator FORD. As long as we have a distillery, we will never be dry.

Mr. COOK. I understand that. But suppose everything was exported and therefore the Commonwealth of Kentucky decided that instead of having any property taxes we would tax distilled spirits at $25 a gallon or $50 a gallon. We would have the tax base in the Commonwealth of Kentucky paid by everybody in all of the wet States in the United States and we would be tax-free.

Now I think that is what the commerce clause is for, Senator, and I think we are asking for relief that basically we are entitled to under the commerce clause, but we cannot get there.

Senator LONG. No further questions at this point. I am waiting, gentlemen, to hear from our people. We have not had any witness against your bill up to now, and I believe we have a few.

Mr. COOK. Senator, you are entitled to that.

Senator DANFORTH. Let me see if I understand the situation, then. You are precluded now from going into Federal court in a tax discrimination case because Congress precluded you from doing so. Is that right?

Mr. GIBSON. That is correct.

Senator DANFORTH. Back in 1937 Congress passed a law that said when State tax matters are in question, the Federal court is not available if there is a State forum.

Mr. GIBSON. That is correct. If there is a plain, speedy, and efficient remedy under State law, and that has been very, very strictly applied. So in very few instances can you ever get around it.

Senator DANFORTH. OK. Now, if Congress had never passed such a statute and you were not specifically precluded from going into the Federal court, would you use the Federal court absent a new statute, and what would be your theory?

Mr. GIBSON. Well, the only theory in Federal court other than raising State law issues, which you could also do in the Federal court, would be discrimination and violation of the commerce clause and the 14th amendment.

And, quite frankly, Mr. Chairman, I believe the natural gas pipelines would lose that case because absent an express determination by Congress that this discriminatory taxation constitutes an undue burden on interstate commerce I do not believe the courts would find such a burden and, therefore, they would not.

Senator DANFORTH. Therefore you are asking us to do two things. First, you are asking us to open up the Federal courts.

Mr. GIBSON. Yes, sir.

Senator DANFORTH. Second, you are asking us to define what constitutes an unreasonable burden on commerce.

Mr. GIBSON. That is correct, Mr. Chairman, and in fact S. 2932 does just that, just as section 306 of the 4-R Act did for railroads.

Senator Danforth. Why do you not think we should just open the courts up for you and let you go into court and make your own case as to what is discriminatory or what is a burden on commerce?

Mr. Gibson. Well, my own personal view, Mr. Chairman, is that the transportation of natural gas by interstate pipeline is so much a part of our national transportation system that it is something that Congress should establish standards for rather than individual States. It is a system which is a part of an integrated national transportation system.

Senator Danforth. You are asking us not only to allow you to go into court and make your case on a case-by-case basis on what is discrimination, but in effect to set State tax rates?

Mr. Gibson. Oh, no, not at all.

Senator Danforth. How does this not set State tax rates? It says that the most you can go is 5 percent higher than what the States do on other forms of property.

Mr. Gibson. What is says, Senator, is that there can be no higher rate imposed upon the natural gas pipeline than is imposed upon other commercial-industrial businesses in the same taxing jurisdiction.

Now the State is still free to set whatever rate it wants to. It just has to apply the same rate to pipelines that it applies to other businesses. That is what it does. But the amount of the rate is still up to the States entirely or the county or the municipality.

Senator Danforth. Right, but I mean absent a specific provision, what is a burden on commerce or what is discrimination would be left to the courts to decide.

Mr. Gibson. Well, yes, but only within the standards established by the courts in interpreting the commerce clause in the absence of congressional determination and the 14th amendment in the absence of a congressional determination.

Senator Danforth. Right. Why not leave it at that? Why should we get in the business of saying to the States not only do we want you not to burden commerce and not to be discriminatory but we are going to set a 5-percent rule, which in effect is telling you precisely what taxes you can charge the pipelines?

Mr. Gibson. I simply do not believe that the purpose of that 5 percent is to impose a particular rate on a State. To the contrary, it is just to provide a means of measuring whether or not one business is paying less tax than the pipeline or businesses in general are paying less taxes than the pipeline.

The amount of the tax is not affected. It is just that you, Congress, are saying to the States that you have to treat natural gas pipelines just like you do other businesses in order to hold down a burden on interstate commerce which we have quantified before this committee to be not $34 million—that is just in the classification States.

If you add up schedule 2 to Mr. Bailey's written testimony, it is a total of $64 million a year, the discriminatory portion, Mr. Chairman, of the tax that we can identify at this point. There may be more than $64 million a year.

Now we say that that is in such a magnitude that the Congress ought to determine it to be an unreasonable burden on interstate commerce.

Mr. Cook. Mr. Chairman, to also kind of cut short that long explanation, I am afraid we are copycats. It is in the 4-R Act. The 5-percent differential is in the 4-R Act, and I am afraid that we subjected ourselves to a degree of plagiarism.

The Senate in 1976 voted the 4-R Act with the 5-percent differential and went on record as supporting a 5-percent differential in the 4-R Act in 1976, and I am afraid we are guilty of plagiarism and that is why it is there.

Senator Danforth. Why can you not right now go into State court on a constitutional theory?

Mr. Gibson. I can. I can.

Senator Danforth. What is wrong with that?

Mr. Gibson. But the purpose of my testimony has been to describe to you precisely why it has been ineffective as a relief from tax discrimination for the several reasons I have outlined and, Senator, this is based on personal experience. I have been there and, believe me, it is very difficult to obtain any form of relief. Where it has been obtained, in many States they have responded with these classification systems.

Senator Danforth. If you raise a constitutional issue in the State court and you lose and you think you have been had and you think that the tax is really discriminatory and is really a burden on commerce, you can eventually get that into the Supreme Court, can you not?

Mr. Gibson. Well, yes, but I want my remarks to you to be clear because I am not suggesting to you that I can go into State court and make out a case for prohibited discrimination under either the commerce clause or the 14th amendment of the U.S. Constitution.

To the contrary, I believe the case law is such that I cannot, even if I were to get certiorari to the U.S. Supreme Court from the State supreme court. The state of the law is that the courts in the absence of a finding by this Congress simply will not strike down discrimination in taxation against businesses such as pipelines.

But once you determine that $64 million a year in discriminatory State taxes is a burden on our national transportation system, precisely what this Congress did for the railroads, then not only can I make out my case under the commerce clause in State court, if you give me access I can also do so in Federal court.

Senator Long. Let me ask a question of Mr. Gibson. If we give you what you are asking for, are you contending that a State would have to tax a shopping center at the same rate it would tax a pipeline, or are you contending that it ought to tax all transportation facilities the same way it taxes a pipeline?

Mr. Gibson. All businesses, Senator.

Senator Long. All businesses. Well, it seems to me that is going a long way to interfere with the State's taxing power, with the effect that you cannot tax any business at any rate less than you tax a pipeline. It seems to me that is not discrimination to tax pipelines on a different basis than you tax other businesses. A shopping center, for example, has very little in common with a pipeline.

Mr. **Gibson**. The Ninth Circuit Court of Appeals made an interesting observation in one of these railroad discrimination cases involving a trailer train company, the Car Line Co. It said that it is important that all businesses be included in the comparison class because those local businesses have clout with local officials, and as long as the local businesses are included in the comparison class, then Congress will be assured of fair treatment for everyone, including the railroads in those States.

Senator **Long**. Well, I am not prepared to agree that pipelines do not have clout and that railroads do not have clout and that privately owned utility companies do not have clout. They do with me. That is not to say that a private citizen, an ordinary homeowner, does not have clout also. They all have some clout.

Mr. Gibson, I do not think that any of you fellows at this table would feel offended at my statements. I think you fellows are very well qualified to speak for the pipelines. I think they have a lot of talent representing them right here now. I am not against pipeline companies; I once owned some stock in a pipeline company.

It was not a bad investment. I just thought there might be a question about whether I was voting for a pipeline company because of the merits or because I was a shareholder, and so it was a good idea to get rid of the stock. But it was not a bad investment at all. I do not have anything against you folks, but I think that my assessors are going to have something to say for their side when they come up.

Mr. **Gibson**. The problem, Senator, though, is that the clout is $64 million a year short.

Mr. **Cook**. Mr. Chairman, I think, first of all, that the railroads had enough clout that they worked on the 4-R Act for almost 15 years before they got it, Senator Long, and I would have to say to you that, Mr. Chairman, the railroads have pretty good lawyers in courts and if they felt they could have gone through the State court and into the Federal court level on this issue they would have done it rather than spend 10, 12, 15 years working on the enactment of the 4-R Act.

And I think that is right where we find ourselves today.

Senator **Long**. At this point I think they ought to have done both, and I think they probably did.

Senator **Danforth**. Thank you all very much.

Next we have James W. "Bill" Little, assessor of Bossier Parish, and he is bringing two other assessors with him; and then Mr. Richard Almy, executive director, International Association of Tax Assessing Officers. Mr. Little.

STATEMENTS OF JAMES W. "BILL" LITTLE, ASSESSOR OF BOSSIER PARISH, BENTON, LA; CHARLES SLAY, ASSESSOR, RAPIDES PARISH, ALEXANDRIA, LA; AND JOSEPH M. VICK, CAE, PRESIDENT, INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, CHICAGO, IL; ACCOMPANIED BY CONRAD L. CATHY, ASSESSOR, SABINE PARISH, MARY, LA; AND RICHARD ALMY, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF TAX ASSESSING OFFICERS

Mr. LITTLE. Mr. Chairman, I think Senator Ford was correct in his statement that Senator Long and I would much rather be on a bayou fishing today.

Senator FORD. It is just an invitation I have not been able to accept.

Mr. LITTLE. Senator Ford, Senator Long, my name is James W. "Bill" Little. I serve as president of the Louisiana Tax Assessors Association. In addition, I am the assessor for Bossier Parish, LA. My colleagues throughout the State and I appreciate the opportunity to present our views to the Committee on S. 2932.

Mr. Chairman, we believe that Federal legislation to guarantee the right to sue in Federal rather than State courts to the question of the equity of State taxes is an unnecessary and unjustified intrusion into the taxing authority of States and localities.

The proponents of this bill claim that without Federal legislation they cannot have their grievances about State taxes heard. It is my understanding that claims that State taxes impede interstate commerce are Federal questions which can be heard in Federal court.

There may be other reasons that a Federal court declines to hear a particular case, Mr. Chairman. The factors that might lead a court to this decision are not unique to cases involving either interstate pipelines or State tax policy. There is no reason to guarantee the right to sue in Federal court unless the plaintiff can show the case involves a Federal question.

I am not an attorney. I cannot speak with legal expertise. I am an assessor and I can tell you about the practical experience my colleagues and I have had with this question. The current method of determining fair market value of interstate pipeline property located in Louisiana was developed during a suit in State court.

The pipeline companies obviously had access to State court to hear their claim. In this case they made a valid claim and the State was willing to enter into a consent decree in this issue of property tax valuation.

Mr. Chairman, the attorney for the Louisiana Tax Commission says that no suits claiming that the State property tax is discriminatory have been filed by any pipeline company since that consent decree was entered into. This suggests that we have a system in place to consider these claims and that it is working.

Louisiana is one of the States that pipeline companies claim has discriminatory property tax rates. Indeed, interstate pipeline property is classified as public service property which is assessed at the rate of 25 percent of fair market value. Electric utility, telephone, telegraph, and barge property are some of the examples of other kinds of public service property.

Intrastate pipelines are classified like commercial property and assessed at the rate of 15 percent of fair market value. Interstate pipelines are assessed at a higher rate than commercial property, but, Mr. Chairman, that is not the whole story.

The base to which these different assessment rates is applied is simply different. In both cases the base is fair market value of the property. The method for calculating the fair market value of public service property results in a lower valuation than the method required to be used for valuing commercial property.

For example, if an interstate and an intrastate pipeline company had identical size pipe, carrying exactly the same product along exactly the same route a few feet away from each other, the fair market value of the intrastate pipeline would be higher than the value of the interstate pipeline. This disparity can be so great that the intrastate pipeline will in fact pay more property tax than the interstate pipeline for the same property, even though the assessment rate for intrastate pipelines is 10 percent higher.

Mr. Chairman, assessor Charles Slay of Rapides Parish, LA, will explain this formula in more detail during his testimony.

You may wonder, Mr. Chairman, how we find ourselves in this predicament. The Louisiana Constitution requires that property be valued at fair market value for assessment purposes. The reason we use different formulas for public service property is that the utility companies, including interstate pipelines, sued the State and said that the method of valuation we use for other property was inappropriate for them. The differing formulas is a direct result of previous State court action on this issue.

The funds from property taxes are important to the communities that receive them and of consequence to the businesses that pay them. Mr. Chairman, in Louisiana we have attempted to be fair to the companies located in our State.

We have more miles of pipeline than any other State in the Union, and it is fair to say that use of our land for this purpose limits the space available for other business enterprises, including those which employ more individuals who would be paying State income as well as property taxes.

Mr. Chairman, the State of Louisiana estimates that its 64 parishes would lose $15,260,000 in 1983 if the assessment rate for public purpose property were lowered to 15 percent and interstate pipelines continued to benefit from the favorable formula used to calculate fair market value.

The fact that the current favorable formula used to calculate fair market value of interstate pipelines was devised through State court action illustrates that pipeline companies have an adequate access to the courts and that their claims will be heard. There is no need for legislation when there are State and Federal remedies available.

The fact is interstate pipelines are not the victims of discriminatory tax treatment. There is no need for Federal legislation which would intrude into the legitimate taxing authority of State and local governments.

Thank you.

Senator Danforth: Thank you, sir.

Now you have other assessors with you, Mr. Little. Who is next? Mr. Slay, would you like to go next?

Mr. **Slay**. Thank you, Mr. Chairman, Senator Long, Senator Ford. My name is Charles Slay. I am the assessor for Rapides Parish in Louisiana. Thank you for allowing me to come here to speak, to testify on this bill.

I come in opposition to S. 2932, Senator Ford's pipeline taxation bill. My first opposition is on the principle that this is a right reserved to the State and the Federal government has no more right to control assessments on pipelines in Louisiana than it does to go into Detroit and force them to assess automobile manufacturing companies on their equipment and buildings at the same rate that we use in Louisiana on the grounds that we would be paying a higher tax in Louisiana than if they moved the plant down there.

Second, Louisiana presently uses the lowest percentage of fair market value of any State, except Arkansas and Utah—they use 20 percent, I am told, and Utah has virtually no pipelines—yet Louisiana would lose more tax dollars under this than any other State. And, by the way, the State of Louisiana would not lose the money. It is the localities because we do not have a property tax for Louisiana for the State; it is just for the parishes.

Third, to force one State to reduce to 15 percent, which is Louisiana, while allowing other States to stay at 85, 90 or even 100 percent is grossly unfair to Louisiana, who furnishes the gas and the natural resources.

Fourth, Louisiana furnishes the gas and the residents furnish the land for right of ways but are not allowed to buy one cent of the gas going out of State. By the way, I am speaking from personal experience because we have got 11 of the things going across our land and we cannot buy gas from them. The gas is sold cheaper in other States than Louisianans can purchase gas locally from our own people, I am told.

Fifth, to deprive the State of Louisiana of the right to assess property as it sees fit is to deprive mostly rural areas of tax dollars to operate their schools and maintain their roads.

Now as to the argument that States have taken an unfair advantage of some poor little pipelines, let me cite you some figures for the State of Louisiana which probably has more pipelines than most States. In 1977 in Louisiana all real and personal assessments made by us assessors was assessed at $5,722,000,000. In 1983 this had gone to $11,442,000,000, while pipelines were assessed in 1977 at $520 million and in 1983 it had gone to $740 million. This is a 100 percent increase for the local people on real and personal property, but only a 43 percent increase for pipelines.

Now this is Statewide, but let us come down to Rapides Parish, my parish. To bring this further to the point, in Rapides Parish real and personal property rose from $108 million to $236 million from 1977 on up through 1983, while pipelines in Rapides Parish decreased from $15,537,000 to $11,919,000, a decrease of $3,600,000 or a decrease in tax dollars of about $400,000—and this is just for one parish or one county, and that is the one that I am in.

When pipelines interstate claim to pay at a higher rate than other properties, they are simply not telling the truth. Let me give you an example. On local properties, replacement cost is the basis for an assessment and on a 36-inch pipeline the cost of that pipeline today is $647,910 per mile. With the maximum depreciation, the lowest assessment at 15 percent would be $38,000. On interstate lines we find the assessments on 36-inch lines at 25 percent to be as low as $19,000 a mile.

And to back that up I have some exhibits. For 1984 the assessment on Texas Gas at $19,000 a mile, and I have the exhibits that I have to follow with our local people where I put them at $38,000, although we are using different percentages.

I further note that while the pipelines seek to reduce assessments made in States that classify certain properties at different rates, they make no effort to correct assessments in States that supposedly use 100 percent and allow the pipelines to escape with a much lower value.

The attached[1] schedule for one State shows 100 percent value on a 36-inch pipeline for 1982 at $254,000, while the true cost is $647,000 per mile, or a 39 percent assessed value against 100 percent district. What I am saying is that in some of our States that are claiming to go at 100 percent, they are using much less, and I have a schedule attached here that shows one of our sister States, that the pipelines are not trying to go up to 100 percent like they do the commercial properties in that other State.

I can go on and on but I must summarize this by observing first that information provided by pipelines is generally not reliable. Second, in the *Maryland* v. *Louisiana* suit of 1981 the tax was against the gas and not against pipelines. Third, pipelines are generally classified as public service properties and not commercial properties. Public service properties enjoy protection by both Federal and State laws that commercial properties do not have.

Now I will stop here for a moment to look at a good friend I have got who owns a store, Mr. Lipsey, and Mr. Lipsey is assessed at 15 percent. But if his store gets in trouble he is going to go broke and nobody is going to come to his rescue. We are not going to let the pipelines go broke; they enjoy protection that commercial properties do not have.

Fourth, what was done in 1980 for railroads has no bearing on pipelines. However, if this line is followed then telephone companies, utility companies and so forth should also be included, so that soon the Federal Government could just take it all over and send the local government a check.

Fifth, pipelines are not in the habit of reducing prices and I have no reason to believe that it would be done in this case. If this is done, it will be at the expense of the people in Louisiana, who cannot buy any of the gas they produce.

I, therefore, make some recommendations. First, this is a bad bill. Leave well enough alone and kill this bill.

Second, if you must consider this bill, amend it by adding "all commercial properties including pipelines will be valued in the same manner by using replacement costs less depreciation." And that is very important. If we are going to assess them, use the same manner of arriving at fair market value.

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[1] The attachments were not reproducible and are in the Committee files.

Three, amend the bill further by adding "All States will use the same percentage of fair market value for assessment purposes." It is not fair for Louisiana to use 15 and Texas to use 100.

Number four, amend the bill further to provide that pipelines pay on the easement over private lands, based on the current fair market assessment of such lands. At present, I am paying the taxes on those easements on that land. They do not pay that.

Fifth, amend the bill to provide that an easement must be renegotiated each 10 years with the landowner, inasmuch as the landowner is required to pay the taxes under present conditions.

Gentlemen, I thank you. I go back to my first recommendation that this is a bad bill and should be rejected. I will answer any questions that you have.

Senator **DANFORTH**. I think you are opposed to the bill.

Mr. **SLAY**. I am opposed to the bill.

Senator **DANFORTH**. Now I am not clear. I understand some of you have prepared testimony and some of you do not. Mr. Vick, are you next?

Mr. **VICK**. Yes, sir. Thank you, Mr. Chairman.

My name is Joseph M. Vick. I am president of the International Association of Assessing Officers. I am also currently the director of appraisals for Palm Beach County, FL, which has a tax base—assessed at 100 percent of market value—of $26.4 billion.

I am accompanied by Mr. Richard Almy, the executive director of the International Association of Assessing Officers. We appreciate this opportunity to present to the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation our views and the views of the International Association of Assessing Officers concerning S. 2932.

Since our association is far from the Washington scene, our written statement provides some background on the International Association of Assessing Officers and the role of assessing officers in property tax administration.

Property tax is a stable and reliable source of local government revenue because property values reflect the long-term economic considerations, not the short-term economic fluctuations. Property tax cannot be replaced by any other tax or combination of taxes without causing dramatic and unpredictable shifts in individual tax burdens and in the revenue-producing capacities of local units of government.

The property tax affords local government a strong measure of fiscal independence. The property tax also captures for local government some of the increases in property values that are partially created by public expenditures.

Property tax is not inherently inequitable, as is often claimed, and in fact has a number of advantages over sales and income tax. It is the only tax that affords taxpayers an opportunity to examine not only their records of assessment of their properties but also the records of assessment of similar or surrounding properties. Thus, the taxpayers can assure themselves of equitable and uniform taxation.

Turning to the subject of your inquiry, property tax discrimination against pipelines and the need for Federal legislation to provide relief from such discrimination, the international association believes, first of all, in equitable property taxation.

Second, we believe since a property tax is essentially a local tax the Federal Government should enact no legislation affecting the property tax unless such action is necessary to ensure a basic constitutional right. It seems to us that the main question in deciding whether to extend the provision of the 4-R Act to oil and gas pipeline property is whether that property has been subject to either legal or de facto property tax discrimination.

We searched case law, statistical reports, and the literature for evidence of discrimination. As a result of this search, we do not believe there is sufficient factual evidence of property tax discrimination against all oil and gas pipeline property to warrant extending the 4-R Act to pipelines.

We also have long been troubled by the wording of the 4-R Act, which is vague and ambiguous. Consequently, there has been extensive litigation involving the act. While the courts have been able to formulate workable solutions to most of the problems in the wording of the act, it is not clear that the intent of Congress has been perceived correctly or that those solutions are appropriate to pipelines.

In short, we believe that Congress should understand the issues raised by the 4-R Act before it extends that act to other types of property.

Thank you.

[The statement follows:]

STATEMENT OF JOSEPH M. VICK, CAE, PRESIDENT, AND RICHARD R. ALMY, EXECUTIVE DIRECTOR, OF THE INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS

We appreciate this invitation to present to the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation, our views and the views of the International Association of Assessing Officers concerning S. 2932.

INTRODUCTION

In order to establish the context of our views, we would first like to describe briefly the International Association of Assessing Officers (IAAO) and the role of assessing officers in property tax administration.

The International Association of Assessing Officers is a non-profit, educational organization with more than 8,000 members in seventeen countries around the world. Though the responsibilities of the members are diverse, with the membership comprising employees of governments, schools and universities, law firms, accounting firms, appraisal firms, and private businesses, we all share a common interest in improving the administration of the property tax and in improving the understanding of important property tax issues.

Assessors are government officials responsible for establishing the value of property for ad valorem tax purposes and for ensuring that all taxable property is properly assessed.

The assessment function generally is carried out by state and local governments. States usually are responsible for supervising the work of local assessors, for ensuring that levels of assessment are uniform for all local governments, and in a number of instances, for appraising properties that cross the boundaries of local governments or present other special difficulties. Railroads and pipelines are examples of the types of property that are state-assessed, pipelines are centrally assessed in about forty states. At the local level, the assessment jurisdiction may be the same as a county, municipality, township, school district, or other special district, or it may cross political boundaries under a consolidated government, such as a city-county or regional area. There currently are about 13,500 local assessment jurisdictions in the United States.

In the U.S., both the governmental structure and the scope of the assessor's authority are delineated by the statutes of the fifty states and the District of Columbia. Most assessors, however, have the following general responsibilities and duties:

1. Location and identification of all real property and all taxable personal property in the jurisdiction (real property may be loosely defined as land and all things attached to the land, and personal property as all other property).
2. Inventory of all such property, including quantity, quality, and important characteristics.
3. Determination of the extent of taxability of each property.
4. Estimation of the market value of each taxable property as of the assessment date (some property legally is appraised on the basis of its value in its current use or a specified use rather than on the basis of its market value, which is based on the most profitable use; in some states the assessor is required to estimate the value of tax-exempt property as well).
5. Calculation of the assessed value (sometimes a fraction of market—or use—value) of each property, and the equalized assessed value (a value refined to bring about greater equity within and among both locations and classes) of each property.
6. Preparation and certification of the assessment roll of the entire jurisdiction.
7. Notification to the owners of the assessed value of their property.
8. Upon appeal by the property owner, appearance and defense not only of the value of the property, but also of the methods used to establish value.
9. Repetition of all these steps periodically, usually on an annual basis.

In accomplishing these general responsibilities and duties, the assessor is responsible to all individual property owners to ensure that values are proper so that each owner pays no more than his or her share of the property tax. The assessor is further responsible to all the people in ensuring that no property escapes the assessment process or is underassessed and that no property owner receives unauthorized treatment.

In addition to its primary function of being a source of revenue for local governments (and thereby providing those governments with a measure of fiscal independence), the property tax increasingly is being viewed as an instrument of social and economic policy, the aim of which may be to provide property tax relief to a particular group of property owners (e.g., the elderly) or to encourage a particular type of behavior (e.g., preserve farmland). While it is the responsibility of elected officials to establish property tax policy and of assessors to help carry it out, assessors, as a result of their day-to-day contacts with property owners and their studies of trends in property values, gain insights on the overall effectiveness of property tax policy. They believe that it is their responsibility as concerned public officials to communicate their insights to policymakers.

Since opportunities for improving the administration of the property tax are affected by the legal framework within which assessors must operate, IAAO also has long been concerned with improving the understanding of important property tax issues. The association's official views on property tax policy matters are contained in a set of policy statements, in "assessment standards" (which deal with administrative and technical matters), and in the association's teaching materials.

As background on our specific views on the advisability of extending Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act)[1] protections to pipeline property, the association has taken the position that states have the responsibility of ensuring the "highest possible degree of equity among property taxpayers" and that, since the property tax is essentially a local tax, national governments "should . . . enact no legislation affecting the property tax unless such action is necessary to ensure a basic constitutional right." [2]

PROPERTY TAX DISCRIMINATION AGAINST PIPELINES

It seems to us that the main question in deciding whether to extend the provisions of the 4-R Act to oil and gas pipeline property is whether that property has been subject to either de jure or de facto property tax discrimination. In the short time that was available to us after we received notice of this hearing, we looked both for evidence of discrimination and for potential sources of additional information on discrimination should there be an interest in pursuing the matter further.

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[1] The 4-R Act currently is codified at 49 U.S.C., Section 11503, although most judicial action is predicated on the wording of section 306 of the original act (Public Law 94-210).

[2] International Association of Assessing Officers, "Policy Statements" (Chicago: International Association of Assessing Officers, 1983), pp. 5-6.

With respect to evidence of discrimination, we examined cases involving oil and gas pipeline property and the literature on that subject.

The Assessment and Valuation Legal Reporter, which is a monthly subscription service of the International Association of Assessing Officers published since 1971, was our primary source in our review of case law. That review turned up no cases alleging systematic or discriminatory assessment or property taxation of oil and gas pipeline property, although there have been a few cases challenging the valuation of specific pipelines. We believe that the lack of cases strongly suggests that oil and gas pipeline property has not been subject to serious property tax discrimination. If there is discrimination, it almost certainly has not been on the scale of that suffered by the railroads.

We also searched for forms of de jure property tax discrimination. Fifteen states have seen fit to enact classified property tax systems in which different types of properties are assessed at different percentages of market value or taxed at different rates.[3] These states are Alabama, Arizona, Colorado, Illinois, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New York, North Dakota, South Carolina, Tennessee, and West Virginia.[4] Of those states, in only seven is oil and gas pipeline property legally taxed higher than other commercial and industrial property.[5]

Additional potential sources of information on property tax discrimination affecting oil and gas pipeline property are assessment-ratio studies (especially those regularly conducted by agencies of state governments) and the literature. Of the forty-three (approximately) states that conduct assessment-ratio studies, only California, Georgia, Massachusetts, Minnesota, New York, Texas, Vermont, and Washington are reported to calculate a ratio for "public utilities," which is a class that would include oil and gas pipeline property.[6] However, our examination of documents from those states revealed nothing on the specific question of property tax discrimination against pipelines.

Our search of the literature uncovered no factual information on property tax discrimination affecting oil and gas pipeline property.[7]

While not providing direct evidence of the presence or absence of property tax discrimination against pipelines, it is interesting to note that assessed values of state-assessed property (a class that includes most interstate pipeline property and which reflects the effects of de jure discrimination) as a percentage to total assessed value in the United States has been declining since 1966 as the following figures show.[8]

ASSESSED VALUES

[In billions of dollars]

	1956	1961	1966	1971	1976	1981
Total assessed values	$272.2	$354.0	$484.1	$694.6	$1,189.4	$2,837.5
State-assessed property	$22.5	$27.8	$41.6	$53.5	$84.7	$159.0
State-assessed as a percentage to total	8.3	7.9	8.6	7.7	7.1	5.6

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[3] U.S. Bureau of the Census, "1982 Census of Governments," vol. 2, "Taxable Property Values and Assessment-Sales Price Ratio" (Washington, D.C.: U.S. Government Printing Office, 1984), appendix A; International Association of Assessing Officers, "Classified Property Tax Systems in the United States," Research and Information Series (Chicago: International Association of Assessing Officers, 1979); and International Association of Assessing Officers, "Property Tax Legislation in the United States," Research and Information Series (Chicago: International Association of Assessing Officers, an annual publication).

[4] In Illinois and New York, only Cook County and New York City, respectively, are permitted to classify property for purposes of taxation.

[5] The seven states are: Alabama, Arizona, Colorado, Illinois, Louisiana, South Carolina, and Tennessee. In Arizona and Colorado, the existing law provides for a gradual reduction in the legal level of assessment of the class of property that includes oil and gas pipeline property until it equals the level of other commercial and industrial property. The situation in Mississippi and Montana is unknown.

[6] U.S. Bureau of the Census, "State and Local Rating Studies, Property Tax Assessment, and Transfer Taxes," Series GSS No. 99 (Washington, D.C.: U.S. Government Printing Office, 1980), pp. 22–23.

[7] A recent, relevant bibliography is Robert M. Clatanoff, "The Valuation of Utility and Transportation Property: A Classified Annotated Bibliography," Bibliographic Series (Chicago: International Association of Assessing Officers, 1983).

[8] "Taxable Property Values and Assessment-Sales Price Ratios, p. x.

In other words, state-assessed property represents a declining component of the property tax base in the United States, while locally assessed real property, the majority of which is single-family houses, represents an increasing component.

We believe that this lack of factual evidence of property tax discrimination affecting gas and oil pipeline property suggests that there is no compelling need for the U.S. Congress to extend the 4–R Act to pipelines.

PROBLEMS WITH THE 4–R ACT

Our second area of concern regarding extending the provisions of the 4–R Act to oil and gas pipeline property has to do with problems with the wording of the Act. While there was a clear, historical pattern of property tax discrimination affecting railroads and while the intent of the Congress in preventing such discrimination was clear, the specifics of the Act left much to be desired. As a result, there has been an extensive amount of litigation involving the Act since the first decisions were handed down in 1979. The issues that the courts have had to grapple with include the constitutionality of the act (answered affirmatively), the effective date of the Act in terms of assessment and tax collection cycles, whether discrimination had to be shown on a local assessment jurisdiction-by-jurisdiction basis or on a statewide basis, how personal property is to be treated in the discrimination detection process, how individual assessment-ratio observations are to be weighted, which statistical measure of central tendency (e.g., median or weighted mean) should be used, whether valuation methods themselves can be challenged under the 4–R Act, and whether "other commercial and industrial property" includes state-assessed utilities.[9]

While the courts apparently have been able to formulate workable solutions to most of the problems in the wording of the Act, it is not clear that the intent of Congress has been perceived correctly or, more importantly, that those solutions are appropriate to pipelines, given the difference between railroads and pipelines. In short, we believe that Congress should understand the issues raised by the 4–R Act before it extends that Act to other types of property.

Senator DANFORTH. Thank you. Senator Ford.

Senator FORD. I am going to yield to Senator Long. These are basically his people, and he should have as much time as he would like to have.

Senator LONG. Let me just cover this with you, then, Mr. Slay. Between you and Mr. Little, you two testified that contrary to what Mr. Gibson said to us—that he has no recourse in the States, no rights, no ability to get his case heard in court—his people did go to court in Louisiana and as a result entered into a consent decree with the State. That was a voluntary consent decree entered as a part of this litigation, is that correct?

Mr. LITTLE. That is right.

Senator LONG. Now as a part of that decree I take it you agreed with them that you would assess, or that is, the State of Louisiana, with you representing the State as an assessor, agreed to assess the pipelines on a basis that they agreed to, which in effect means that you are assessing them at about 50 percent the rate put on exactly the same pipeline if it is intrastate pipeline.

In fact, you are assessing both and that is how it works out.

Mr. SLAY. That is exactly right. I am assessing Louisiana Interstate, which is a local group, on that 36-inch pipeline laying right beside Tennessee Gas, or Texas Gas, or Columbia Gas using 15 percent, and I come up about twice as much in value as we have got on these people.

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[9] In addition to the various decisions, see such commentary as J. Lawrence Blankenship and Gary W. Gardenshire, "Section 306 of the 4–R Act: A Litigation Update" (a paper presented to the Midwestern State Association of Tax Administrators, August 21, 1984); Glen W. Fisher, "The Four-R Act and the Taxation of Transportation Property," "Assessment Digest" 5 (September/October 1983): 2–10; and James F. Gossett, "Assessment Law Notes: Recent Cases Involving Utility Valuation/Equalization—Ramification and Trends," "Property Tax Journal" 2 (December 1983): 275–292.

Senator LONG. Now I just multiplied those figures out that you gave me, and I might not be the best human computer on Earth, but my pencil says that if you take those two valuations, that is, you take one at $19,000—is that $19,000 against $38,000 a mile?

Mr. SLAY. That is the assessed value.

Senator LONG. Well, if I multiply $19,000 by 25 percent, I come up with a $4,750 figure to tax the taxpayer.

Mr. SLAY. That is right.

Senator LONG. And I multiply the $38,000 by the 15 percent. I come up with $5,700. So the guy who has a right to complain about the tax is the intrastate guy at 15 percent, not the interstate guy at 25.

Mr. SLAY. Exactly right.

Senator LONG. So it is these commercial businesses, such as Mr. Lipsey, for example, whom you mentioned—and he is a very nice fellow—with a department store in town, who has the right to complain, and you are saying that the same thing applies to every other taxing jurisdiction in Louisiana.

Mr. SLAY. I sure am.

Senator LONG. So these pipelines went to court. They had their day in court. They made themselves a deal so favorable that they are being treated better than a shopping center.

Mr. SLAY. That is exactly right.

Senator LONG. And then they come in wanting Congress to pass a law to reverse that.

Mr. SLAY. That is right.

Senator LONG. Does it not make you wonder what it takes to satify these people?

Now I notice that the pipelines have given us a chart here, and they picked Louisiana as the No. 1 offender. They tell us, based on a Wyoming case, that they have no recourse in court. Why do they not list Wyoming as an offender?

And then they come in here with a $33 million figure, but it is not $33 million we want to go after. We want to go after $64 million. Can you for the life of you explain to me, if they want to go after $64 million, worth why don't they put the other $30 million on that chart?

Mr. SLAY. I saw the two different figures and I wondered how we arrived at two. I seen the $64 million figure and I seen the $30 million figure, and I said well, there is a discrepancy and I do not know why that was done by people like that. But using their own figures and going back to what you said, when they used Wyoming as an example a few minutes ago, and then I looked over and I said well, they are not even protesting what Wyoming has got.

But they use them as an example of a State where they could not go to get recourse because some of the people who made the assessments sat on the board. But they are not protested here. They protested in Louisiana, where they have been treated so favorably.

And I will say this for the State of Louisiana. I am proud of it. I think it treats everybody right on taxes, on property taxes. We have trouble with one of the lowest, but to come here and say that we are treating them bad to the extent of $12 million and Wyoming to the extent of zero, it makes me feel bad that they say that about our State, Senator.

Mr. LITTLE. Senator, I think if they had the deal in every other State they have in Louisiana, there is no doubt that they would not be here today.

Senator LONG. I must say in the discussions I have had with people in both the oil and gas businesses, they have complained bitterly about the way they are treated by the Federal Government and, generally speaking, they say that if they could only be treated as well by the Federal Government as they are treated by Louisiana, practically all their other problems would be solved.

Is that not about what you generally hear from them: "Thank God for Louisiana, because if we were operating in Federal areas, for example, it would take 4 years to drill a well. In Louisiana we can just drill the day we get the lease." And do they not generally pick Louisiana out as the most favorable State in the Nation for their crowd to do business in?

I would like you to answer for the record.

Mr. SLAY. Senator, I have to agree with everything you say. I need a record, too. I am going to run next year.

Senator LONG. Thank you.

Senator DANFORTH. I think we all agree that discrimination against gas pipelines is bad, and the good thing about Louisiana is that it does not discriminate against pipelines. And if the rest of the country were as good as Louisiana, everything would be rosy.

You agree that discrimination against pipelines, and particularly discrimination against interstate pipelines would be a bad thing, do you not?

Mr. LITTLE. Surely do.

Senator DANFORTH. Why do we not just provide that in the law then? It seems to me that what we are providing here is to just bring the rest of the country up to the fine standard of Louisiana.

Mr. SLAY. I would be happy to see that if you put that one thing in there, that we assess them based on fair market value, replacement cost less depreciation. That is what I use on all the homes. That is what I use on Mr. Lipsey's business, and everything else. If you just write that in there, you are going to see them squeal like a stuck pig and they are going to be here in force.

Senator DANFORTH. Well, I am not an assessor. I think we are not in the business of assessment in Congress. I do think, though, that we are in the business of trying to make sure that interstate commerce functions without discrimination, and it seems to me that the basic standard of nondiscrimination against interstate commerce and the basic standard of nondiscrimination against pipelines in interstate commerce is something that we all agree to.

I am wondering why not just write it into law.

Mr. LITTLE. Senator, surely you have got other States like Louisiana. If you—they have had a right to be heard in State court in Louisiana; that is a fact. Rather than make it and put it in the form of legislation where every State has got to do away with classification, in other words, why can you not legislate to give them the right, if they cannot get recourse in State court, the right to go to Federal court without tampering with the right of classification?

Senator DANFORTH. Well, I am not sure we would be tampering with the right of classification. It just seems what we are tampering with is discrimination. That is to say I do not think that the statute necessarily precludes a 15-percent rate as opposed to a 25-percent rate, provided it comes out the same.

You say that it does. Maybe it even favors the interstate pipelines. But I think that it is the result that we would be getting at. But would you object to that if we just had a statute which said that every State can assess whatever they want and however they want, but in result that has to be nondiscriminatory? Is there anything wrong with that?

Mr. VICK. Mr. Chairman, about 15 States have classification and about 8 discriminate against pipelines. The biggest problem is that the language of the 4-R Act itself has caused undue problems with a lot of States.

Senator DANFORTH. Maybe we should review that. You know, I am not necessarily defending the 4-R Act, but as far as the result is concerned on nondiscrimination there is nothing wrong with writing that into law, is there?

Mr. VICK. Mr. Chairman, I think every assessor in the International Association of Assessing Officers would not stand for any type of discrimination. The problem is in the valuation, and it is an opinion of value.

The appraisal process does not change whether I am in Washington, DC or I am in Bossier City, LA.

How the States handle it statutorily, that can change, yes. But the key is that any assessed valuation for the sake of equity must be based on market value, and you use cost, market, and income where they are applicable to arrive at that market value.

Senator DANFORTH. It is a question of fact, really.

Mr. VICK. You are right.

Senator DANFORTH. But I mean if the facts turn out that it is in fact discriminatory——

Mr. VICK. Then it should be handled, yes.

Senator DANFORTH. Then it should be handled, and you should not have a situation where, let us just take a hypothetical situation, not Louisiana. But take a hypothetical situation in which there are two pipelines that are side by side. They are identical, except one is intrastate, one is interstate. The effective tax on the interstate pipeline is twice as high as the intrastate.

Clearly there should be a recourse, should there not?

Mr. VICK. Absolutely.

There is only one market value for any property, and as long as you use that market value and apply it to all types of property you have provided the best job of equity that there is. Of course, appraisers may differ as to what the market value of a given property is. But unfortunately—and again I appreciate your comment, Mr. Chairman—I would like to have your committee take a look at the wording in the 4-R Act, because if you will look at the States that have been in the courts and so forth, it has caused a lot of problems.

Senator DANFORTH. Any further questions?

Senator FORD. I just yielded to Senator Long. I think we are getting down to the real reason for, and the sincere effort that is made in, this piece of legislation, to ensure that there be no discrimination. All of you gentlemen have agreed that we ought not discriminate.

So what we need to do now is to find the language that would accommodate what at least I am attempting to do—to ensure that there is no discrimination as it relates to rates.

Now I can make a pretty good speech in your parish for you, Mr. Slay, and I hope you have recorded yours today because you can take it back home and play it and win reelection. So I understand where you come from, and I like your Senator over here. I have learned a lot from him and Uncle Earl.

You talk about how much your assessment has increased. Well, maybe the company has replaced the pipeline, and it has depreciated. Where you have had all this new building in your parish and you have had all the additional assessments, I want to know how many new buildings, how many new homes, how much new has been added to your assessment rolls, and how have you appreciated some of your property as compared to just the pipelines, which have had basically no change.

I could understand how you could reduce the cost of the pipeline and make that look very good and increase your personal property and make that look quite high. Now I could take that back to Louisiana and say that this assessor has assessed the property owner way out the top of the thermometer, but state what he has done to that great big mother that lives up there in New York. He is letting her off the hook.

Now which way do you want it, Mr. Slay?

Mr. SLAY. OK. We talk about this pipeline that has been depreciated.

Senator FORD. I just asked you the question. Could that not be a possibility?

Mr. SLAY. It could be a possibility.

Senator FORD. Have you had any new buildings in your parish in the last 6 years?

Mr. SLAY. We have added new buildings.

Senator FORD. Have you added new homes in the last 6 years?

Mr. SLAY. We have added new homes.

Senator FORD. What about shopping centers?

Mr. SLAY. We have had all of that.

Senator FORD. OK. How many new pipelines have you had, Mr. Slay?

Mr. SLAY. Let me think just a minute. I do not believe we have had any new pipelines in the last 10 years.

Senator FORD. OK. So during your time you have not had any new pipelines, and, therefore, you have had a depreciation of those pipelines. But during those 6 years you have had new homes, new buildings, and new shopping centers which add to your assessment rolls without increasing your local taxes on Mr. Jones' store, or whatever.

Mr. SLAY. OK, Senator, let me talk now a minute. I built a home when I got out of World War II and I won $2,000 in a crap game and almost built that home for $2,000.

Senator FORD. I bought one for $9,000 when I got out. So, you know, you and I are about the same age.

Mr. **Slay**. Today it is assessed at $50,000, appraised at $50,000. It has gone up. Now we talk about this pipeline here. We are showing that it is valued at 25 percent of its fair market value, its cost on today's market. If that pipeline has depreciated and it is in that bad a shape, then the Federal Pipeline Safety thing ought to make them dig that pipeline up and put in one that is safe, because one of them is 100 feet from my mother's bedroom.

Senator **Ford**. Now let me ask you a question right there. You are a pretty good fellow; I like you. You and I would get along well. We would probably carry a precinct together.

Mr. **Slay**. We would work at it.

Senator **Ford**. Now are you appreciating that pipeline each year?

Mr. **Slay**. No, sir.

Senator **Ford**. What about the replacement cost? You do not assess the pipeline at replacement cost?

Mr. **Slay**. The pipeline is asssessed by the Louisiana Tax Commission. They do not use replacement cost; they use a number of complicated figures based on income and depreciation and all that.

Senator **Ford**. You mean you assess a pipeline on income, not on the value of the pipeline?

Mr. **Little**. That is what was agreed on by the pipelines in that suit.

Mr. **Slay**. They take the pipeline from the Gulf of Mexico all the way to Detroit and get the total value of it and then they take the number of miles in Louisiana and say you are entitled to this much value. But when you get to these pipelines and they start showing their value, it is so complicated it would take a man a whole year to figure out one pipeline, just what his value is.

Let me stop just a minute. There is more than one kind of depreciation. You depreciate property for income tax purposes in order to get a return on your money. You depreciate this man's home because it has gone down in value. If his home was 50 years old, you would say well, for income tax purposes it has gone off the books. We should not even have it assessed, but we do not do that on his home. We look at its value on today's market, what it would bring if he sold it today.

Now on a pipeline——

Senator **Ford**. You assess 100 percent in your parish?

Mr. **Slay**. We assess residential property at 10 percent of its fair market value. We appraise at 100 percent.

Senator **Ford**. Appraise it at 100 percent and assess it at 10 percent. The house that you built for $2,000 is now valued at $50,000, and you tax it at $5,000?

Mr. **Slay**. That is right. That is correct.

Now coming back to our pipelines, we take the figures and look at the assessed value in Rapides Parish—and this is made on the State level; they do give it to each parish on an interstate pipeline. When I get this value I look at it and apply it against what I know it costs according to the pipeline people themselves to put a mile of 36-inch pipe in the ground.

I see that they have got their appraisal down to about 15 percent of replacement cost, and if that pipeline is that bad, I again say that something ought to be done with it.

Senator **Ford**. Well, what I am saying is that you do not assess the pipeline yourself then, do you?

Mr. **Slay**. No.

Senator **Ford**. Well, then you really do not have any control over this today. You have a court agreement between the people of Louisiana who are in authority and the pipelines. They settled it, and it was approved by the court in the consent decree. The State assessor's office, or whatever you call it, sends you the value, and you tax for your parish?

Mr. **Slay**. I do not assess interstate, but the intra, which is a local man. I assess him and I base it on a $647,000 per mile cost, and I come up with a $38,000 assessment. It is the lowest I can go.

Senator **Ford**. But the intrastate pipelines ought to go to court and get an agreement, let your State assessor do it, and then let the State just send you a bill. Now you have to say that the State somewhere along the line, that is, those in authority in the State of Louisiana, and those interstate pipelines went to court.

Before they let that come to a final judgment, both sides—the State of Louisiana and the pipelines—agreed. All right, that is the end of it, is it not? And you now get the assessment from your State assessor's office. OK.

Then that is what you charge them. You do no work for that except send them a bill. OK, that is good enough.

To bring it to a further point, you say down here——

Senator **Long**. Why don't you let the witness answer the question? Are you trying to answer the question, Mr. Slay?

Mr. **Slay**. Yes.

Senator **Ford**. I did not mean to interrupt you. I thought you had answered.

Mr. **Slay**. These people went into court and they agreed on that and now they are coming in this morning and saying we do not want that. We want a change and we want you to lower it even further.

Senator **Ford**. No, no.

Mr. **Slay**. They want to drop it from 25 percent or whatever we use to 15 percent.

Senator **Ford**. No, Mr. Slay. You are missing the point. You are trying to argue your side, and I have to try to argue my side. All of us have agreed that we do not want any discrimination in taxes, and if everybody was as good as Louisiana we would not have the bill.

So if we had the bill, you ought not to have any problems because you do not want to discriminate. Everybody says it is great in Louisiana, and so if we pass this bill it ought not bother you at all. Basically, your testimony is one thing, and your agreement is one thing, but then you do not want the bill.

Mr. **Slay**. We do it fair in Louisiana, I think, but it would not affect us except that it says it would take $12 million away from us, according to the figures I see here. We are going to lose $12 million and in Rapides Parish and it is going to do something to us, because we will drop from the 25 percent figure that the State tax commissioner wanted to use down to 15 percent.

Senator **Ford**. But did you not just agree with the chairman a moment ago that if the 10 percent or 15 percent or 25 percent reflected the same amount of money it would not make any difference anyhow, would it. Your rate is what brings you the income, is it not?

Well, now I have been there. In my State, we do not call them tax assessors or tax commissioners anymore. We call them property valuation assessors. You know, we have made them lifetime. You just cannot get them out of office in my State—we had to pass that piece of legislation by the way, because I think they can be harrassed and when you are harrassed as a tax assessor, or whatever you might be called, then you are subject to pressure, and I do not want it that way.

I want you to do what is fair and I think our State has become fairly decent in fairness as it relates to the property owner or whomever it might be.

So I would hope that you would look at the rate. You can change the rate. We change the rate in my county, which is equal to your parish, every year. The rate is the income. I do not care what value you put on it or how much you assess it. It is the rate you put on it that brings you the dollars.

You take whatever the assessment might be and you factor that times the rate, and that gives you the net income to your parish. Now you could either raise or lower that rate, could you not—do you have the authority to do that? Can your county commissioner? Who raises or lowers your rate of taxation?

Mr. Slay. The school board, the police jury sets the rate. There is some constitutional taxes they can levy without a vote of the people, but whatever rate applies to everybody. But I believe one thing I want to point out to you, that using 25 percent of what these people agreed to produces an assessment of $19,000 per mile, and we apply our rate against $19,000 to get the tax dollars.

If you drop that to 15 percent of what they have agreed to you are going to get something like $12,000 or something, and you put your millage against that and get less tax dollars.

Senator Ford. Who sets the millage?

Mr. Slay. The taxing bodies.

Senator Ford. You do not set any rates?

Mr. Slay. I do not set rates.

Senator Ford. You estimate the value.

Mr. Slay. I appraise property and make the assessment.

Senator Ford. Then let us get back to one other item. The house that you built for $2,000 is now valued at $50,000, OK? You would then assess it for taxing purposes at 10 percent.

Mr. Slay. That is right.

Senator Ford. Which is $5,000.

Mr. Slay. Right.

Senator Ford. What kind of, what do you call it, rebate do you provide the local homeowner?

Mr. Slay. Homestead exemption.

Senator Ford. OK. What is the exemption?

Mr. Slay. OK, in Louisiana we have probably the best. We have a $75,000 exemption.

Senator Ford: $75,000 exemption?

Mr. Little. $75,000 fair market value.

Senator Ford. So that house is not taxed?

Mr. **Slay**. No; let me point out to you, though, that I own additional land that I do pay taxes on.

Senator **Ford**. Well, you are just rich, Mr. Slay. But I talked about that one house that you mentioned to me that you built for $2,000 when you got out of World War II, now valued at $50,000, but you do not pay any taxes on it in Louisiana.

Mr. **Slay**. Homestead exemption on that.

Senator **Ford**. So there are various and sundry points that you were trying to make to me, but you really did not pay any taxes on it. So, Mr. Slay, someone is getting gored a little bit, and I do not think you are getting gored.

I think when your school board and your police assessors look at what might be produced at 15 percent, that rate will go up slightly in order to accommodate the budgets that they have. It is done every year all over in this country. I do not see how you are going to lose any money.

Mr. **Slay**. I could not argue with you at all on that, that when it goes up they are going to have to raise the millage rate and that local man that is being assessed twice as high as them is going to pay more taxes, and Mr. Lipsey is going to pay more taxes because they are going to be picking up the bill on what we are losing from these people here. That is what it is going to do.

Senator **Ford**. Well, all you are saying is that everything ought to be taxed, assessed and appraised fairly and the same. Why is your intrastate not assessed the same as the interstate? Is that out of your hands, by the way? The State could do that.

Mr. **Slay**. Yes; we would go to the State legislature and get this changed and use replacement cost less depreciation and instead of us losing $12 million maybe we would pick up $12 million, if we put them all just alike. And if you want to be real fair, that is what we would do.

Senator **Ford**. You are saying right now then that you are not fair.

Mr. **Slay**. No; what I am saying is that if we use the same method of assessing these people as we do the local pipelines then their values would shoot up and when I say replacement cost less depreciation.

Senator **Ford**. What makes you assess your local people that way—we usually try to stick foreigners.

Mr. **Slay**. Louisiana is just so fair. Let me point out to you, then, without being——

Senator **Ford**. I know there is a great oil company out there that does not like windfall profits but likes the depletion allowance.

Mr. **Slay**. We tried to adopt schedules on the local level and we do this statewide so that I do not assess a pipeline one way and this gentleman another on the local level.

Senator **Ford**. Well, the State does that for you.

Mr. **Slay**. But they send us a schedule down and they show us that the cost of that pipeline is $637,000 a mile and then they show me how much I can depreciate it. And when we got down to 40 percent on local ones that is where we level off. We do not go below that.

On the other people, interstate, we have gone much less than 40 percent on depreciation. So what I am saying is that they do not have much of a complaint.

Senator **Ford**. I thank you. I must say I like you. I hope you do not take offense to me, because I just enjoy a good debate, and I think you stood your ground very well, but I want you to know that I understand the local tax assessor, tax commissioner, and that sort of thing. I have been there several times.

Mr. **Slay**. I used to stump with Uncle Earl and I stumped, and Russell do not remember it, the first time he was elected. I was running for school board member.

Senator **Ford**. Well, my daddy always told me two things I should never do, Mr. Slay—get into an argument with a crying woman or get in a school board race.

So I am going to leave those sort of things to you.

Mr. **Slay**. I served 25 years in Rapides Parish.

Senator **Ford**. Rapides. I learned to pronounce that here this morning. I have learned a lot.

Senator **Long**. I would like to just ask one or two other questions. It seems to me that we have a situation in Louisiana where we have a law that is a part of the constitution. This was submitted to the people. They went out to the polls and voted. They agreed that you would classify property as follows.

Is that 25 percent and 15 percent rate in our constitution now?

Mr. **Slay**. It is in our constitution.

Senator **Long**. Voted on by the people?

Mr. **Slay**. By the people.

Senator **Long**. So if the Congress should pass this law, is it not fair to assume that the legislature would in due course be forced, and you would be urging them, to pass a constitutional amendment to change the way we assess pipelines, at least the interstate pipelines?

You or the State would be compelled to come up on other commercial property or come down on pipelines, but you would probably be compelled to go to a 15 percent rate unless you wanted to go up on other commercial properties, is that correct?

Mr. **Slay**. That is correct.

Senator **Long**. By the same token you would also be taking the view that the deal is off as far as that consent agreement you made with those pipeline companies, and you would assess them the same way that you would assess an intrastate pipeline?

Mr. **Slay**. That is right.

Senator **Long**. By the time they got through they would not be a bit better off than they are right now.

Mr. **Slay**. It would not be as good. They would be paying twice as much.

Senator **Long**. Now some of you might have indicated with regard to some questions that you might go along with a law on some basis. I do not think we ought to pass any law at all. I do not know any reason why the Federal government should get involved when these people cannot show that they are being treated badly.

Now it also seems to me that the burden is on them to prove all those broad statements applying to some situation in Wyoming, which they do not even list on the chart, assuming the experience they had in Wyoming on some matter or another is the same as in other States.

So that if they can make that case, State-by-State, to show where they are being discriminated against, perhaps the proposal ought to be considered, but when they pick Louisiana as their number one State and then the evidence is that they are not being discriminated against, that they are not being treated unfairly, and that here is the same industry that is very much associated with the oil and gas industry.

They are part and parcel of the same fraternity, and here is the same crowd that tells us that Louisiana is the number one State in the Nation as for treating them very favorably and carefully considering all their problems. To come in here now and say that Louisiana is the number one culprit seems to me to be pretty ridiculous.

I do not know any reason that we should pass a Federal law to strike down State constitutions and State laws in the absence of a showing that they the pipelines are really being treated very badly and that there is something compelling about it. I do not see their case, frankly.

Senator **Ford**. Let me ask my distinguished friend a question. We did in this committee take care of railroads, apparently. We did paint with a broad brush as relates to airlines. We did paint with a broad brush as relates to buses. And now we are balking on trying to be fair as it relates to pipelines, that is, natural gas pipelines.

I just wonder if the committee is not discriminating when we have already helped several industries, all interstate—we are in this town more responsible for interstate problems than we are for intrastate. So there is something about that.

You begin to look at the law and what we have done through this committee in the few years that I have been here—in fact the last 4 to 6 years, we have done all those and now we are backing off.

Senator **Long**. Well, I do not see why, Senator, because we did something in one situation where the industry was able to show that it was having a difficult time making it, going into bankrupcty and experiencing financial difficulties, that we have to do the same thing for everybody else and simply continue a process of relieving the local governments of their responsibility and moving over into the Federal court's jurisdiction what should belong to the State.

I personally do not agree with you.

Senator **Ford**. Well, I understand that, and we disagree without being disagreeable. But this is an interstate problem, and it goes from State to State and crosses borders. Leaving Louisiana, it comes all the way to Maryland. It goes across my State. It goes across Tennessee, Kentucky, and Ohio, and it becomes interstate. And you see a company that is trying to serve, and it is in 15 counties, as Mr. Gibson said earlier, and he has got to file in 15 separate counties.

Now that makes it almost impossible to make that filing, you know, or to get anything done. Here we would give him a remedy in a shorter period of time anyhow by allowing him to go to one court. Now that is part of this, as I see it. It is beyond the tax and, of course, the money is where you begin to get the yell.

I doubt seriously if your State could see that they would not lose any money, and I doubt seriously that the State will lose because someone will run to the State legislature and change the classification or do something in order to increase the rate. If the rate is increased, the proposal gives the pipelines an opportunity to get to Federal court.

That is all, I think, in the interstate problem here. If it were purely intrastate and had nothing to do with anybody but Louisiana, I do not think we would ever be here. The railroads go across the State, the airlines fly through there, and buses go across the State line.

Senator DANFORTH. Mr. Vick?

Mr. VICK. Mr. Chairman, along that same line, it is true—and I have been to Mr. Ford's State; I have taught appraisal courses there a number of times, was there for how they assess cable TV, for example.

I appreciate your comment, Mr. Chairman, that perhaps the 4-R Act should be looked at. I think the way you get good government is to have good local government, and I think the assessors basically through the last 10 years——

Senator DANFORTH. Let me say that that was a rhetorical suggestion, Mr. Vick.

Mr. VICK. I understand. But I would hope that sometime they would take a look at it.

Certainly the assessors nationwide have come a long ways in doing a better job of appraisal and are concerned about equity with all types of property.

Senator DANFORTH. Gentlemen, thank you very much.

That is the end of the hearing.

[Whereupon, at 11:56 o'clock a.m., the subcommittee adjourned, to reconvene upon the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATE OF KANSAS,
OFFICE OF THE GOVERNOR,
Topeka, October 1, 1984.

Hon. NANCY LANDON KASSEBAUM,
U.S. Senator, Russell Senate Office Building, Washington, DC.

DEAR NANCY: On behalf of the State of Kansas I would like to express our grave concern over the inclusion of a provision in S. 2932 which would extend "4-R-type protection to interstate pipelines. The proposed extension of 4-R-type protection to interstate pipelines represents a substantial federal intrusion into a state's responsibility and prerogative to establish its own tax policy. It places Congress, once again, in the position of creating a preferred class of taxpayers and of shifting a portion of the state and local tax burden onto others.

Since the enactment of 49 USC § 11503 which provided that interstate railroads must be treated, for ad valorem tax purposes, like all other commercial and industrial property within the assessment jurisdiction, the federal district courts in Kansas and elsewhere have been burdened with constant litigation seeking ad valorem tax relief. In Kansas, the first 4-R cases were commenced in June 1980 and have only been resolved by settlement one week ago. During the pendency of these actions, railroads were allowed to withhold all taxes which they believed to be in controversy; as a result, Kansas local governments were deprived of over $30 million in taxes. These dollars were sorely needed to provide essential services, including education. Many of the dollars withheld should have been paid to the local units of government; however, because the issues involved in the litigation were complex and the statute was subject to many interpretations, they were not made available until the conclusion of numerous hearings, trials and appeals.

S. 2932 further erodes the State's ad valorem tax base. As proposed, S. 2932 would compare the assessment level of interstate pipelines to all other commercial and industrial property. However, as written, the bill excludes from the definition of commercial and industrial property both minerals and public utility property. In Kansas, such an exclusion would represent a means by which the interstate pipelines would actually be compared to only a small percent of all "commercial and industrial property." In 1980, for example, public utility property comprised 15 percent of the total commercial and industrial tax base in Kansas while oil and gas accounted for approximately 30 percent. The proposed legislation would exclude from the comparison group almost one-half of all commercial and industrial property in Kansas. Very likely, the legislation would reduce pipeline property taxes by as much as $15 million (50 percent) and shift that burden to others such as mineral interests, public utilities and individual home and landowners.

After four years of involvement in 4-R litigation, the State of Kansas believes that its administrative and court system are more than adequate to deal with the problems of discriminatory ad valorem taxation. The procedures in Kansas are not complicated and are much less time-consuming than that actually experienced by the State within the Federal court system. Had the Kansas court system been used, local governments would not have been deprived of in excess of $22 million which they were rightfully owed.

The State of Kansas would welcome the opportunity to address your Committee and share its experience in dealing with this type of federal legislation. The State of Kansas opposes additional 4--R type of legislation such as that contained within S. 2932 and believes that in most jurisdictions legislation of this type simply makes railroads or interstate pipelines a preferred taxpayer at the expense of all others.

We hope you will record our opposition to Senate Bill 2932 for the reasons I have outlined.

Sincerely,

JOHN CARLIN, *Governor.*

STATEMENT OF THE STATE OF ALASKA

The State of Alaska opposes Section 4 of S. 2932, which adds a new tax-oriented section to the Pipeline Safety Act of 1968. That section prohibits states or local governments from assessing natural gas transmission property at a higher value or rate than that appplicable to commercial and industrial property. We believe that this provision of the bill is an intrusion into traditional state taxing authority.

Although the proposal has no impact on the State at this time, it could conceivably conflict with Alaska's existing Oil and Gas Exploration, Production, and Pipeline Transportation Property Tax (Alaska Statute 43.56, enacted in 1973). The tax covers certain types of oil and gas hardware and is levied on a statewide basis. If a local government wishes to levy a tax on the items covered by the State tax, it must do so at a rate no higher than the rate applicable to other property taxed by that entity. Other limitations on total tax collections by a local government also apply.

Although the State currently has no interstate gas pipelines, it is possible that the statewide rate of 20 mills on the full and true value of the properties covered by AS 43.56 could conflict with local tax practices on other commercial or industrial property, as defined by the bill. In addition, AS 43.56 could conflict with S. 2932 because it is the only statewide property tax, and does not apply to all commercial and industrial property in the State.

We believe that AS 43.56 is a fair and reasonable State tax law, designed to prevent conflicting local taxation of properties of statewide importance. Because the hardware in question either crosses jurisdictional boundaries or possesses special significance, a state law was viewed as necessary by the Alaska legislature. At the same time, other types of commercial and industrial property were not viewed as significant enough to be subject to a statewide property tax. In addition, many of the properties in question are located in areas which are unorganized and not subject to the authority of any local government.

In conclusion, the State believes that S. 2932 should be amended to exempt the existing Alaska oil and gas property tax statute from its purview. We would be pleased to work with Committee staff to draft language accomplishing that result.

STATEMENT OF THE AMERICAN GAS ASSOCIATION

The American Gas Association (A.G.A.) is a national trade association composed of nearly 300 natural gas distribution and transmission companies that serve approximately 160 million consumers in all 50 States. A.G.A. membr companies account for about 85 percent of the nation's total annual gas utility sales.

A.G.A. is pleased to present its views on S. 2932, a bill which would require that the rate the States use to assess interstate pipeline property for the purpose of property taxes be within 5 percent of the rate applied to other commercial and industrial businesses.

The A.G.A. is committed to ensuring that all possible steps are taken to minimize natural gas costs to consumers. One of these steps would be to end State discrimination in the assessment of property tax rates on interstate pipelines. Some States impose a higher property tax rate on public utility property, including interstate pipelines, than is assessed on other types of commercial and industrial property. This is particularly inequitable in the case of interstate pipelines, because the tax burden is imposed on residents of other States through higher gas costs, yet these customers receive none of the benefits of those taxes. Furthermore, the pipeline company rarely has a choice of States in which to locate the lines and is unable to move the pipe once it has been situated. We strongly support the enactment of legislation which will provide the same protection to interstate pipelines as has been afforded to virtually all other forms of interstate transportation: railroads, motor carriers, and airlines.[1]

Rising natural gas prices are primarily caused by: (1) increases at the wellhead; and (2) federal, state and local taxes. A 1983 A.G.A. Energy Analysis ("Cost Components of the Average Gas Price," copy attached) points out that the tax burden on the natural gas distribution and transmission industry is "significantly higher than the average for all industries. . . This is particularly evident for state and local taxes [which] . . . represented an average of 63 percent of net income for gas transmission companies [in 1979]—compared to 40 percent for all industries. . ." Under Federal Energy Regulatory Commission (FERC) regulations, state and local taxes imposed on pipelines are flowed directly through to natural gas consumers as a component of the cost of service. By the same token, any decrease due to lower taxes is also reflected in a lower cost of service to the consumer.

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[1] Antidiscrimination provisions are contained in the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law No. 94-210, railroads); Motor Carrier Act of 1980 (Public Law No. 96-296, motor carriers of property); Tax Equity and Fiscal Responsibility Act of 1982 (Public Law No. 97-248, airlines); and Bus Regulatory Reform Act of 1982 (Public Law No. 97-261, all motor carriers).

Since the enactment of the Natural Gas Policy Act of 1978 (NGPA; Public Law 95-621), the U.S. gas supply outlook has improved dramatically. However, this progress has been complicated by major increases in gas prices and a falling demand for natural gas in the industrial sector. Indeed, gas utility sales to industrial markets had at one point fallen more than 20 percent below traditional levels—although some of this lost load subsequently has been regained as gas prices have stabilized and the economy has begun to recover. Loss of industrial load is typically due to: (1) fuel switching; (2) decreased industrial production due to the recession; (3) price-induced conservation; and (4) plant closings. Although less gas is sold as a result, the costs of doing business (e.g., maintenance of equipment, wages, State and local property taxes) remain the same. However, there are fewer customers left on the system to share these fixed costs. Thus, further loss of industrial load will force each of these remaining customers (for the most part residential and commercial users) to bear a higher proportion of the fixed system costs as a component of their gas bills. Such a cost impact, of course, occurs in addition to the direct impact of passing through the higher taxes imposed by another State.

To the extent that enactment of Federal legislation to end and prevent these discriminatory State tax practices results in lower taxes paid by interstate pipelines, these savings will be passed through to consumers through a lower cost of service. This in turn may help in regaining lost industrial load and thus reduce the proportionate share of fixed costs borne by each ratepayer.

We do not advocate doing away with state and local taxes, of course. We merely seek equity on two levels: (1) the same Federal statutory protection afforded to other interstate modes of transportation; and (2) the same tax treatment afforded to other commercial and industrial properties within a particular jurisdiction.

Thank you for the opportunity to express our views on these issues of vital importance to the regulated natural gas industry.

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